HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, May 20, 2013
83rd Legislature, Number 77
The House convenes at 10 a.m.
Part One

Sixty-two bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills on the Major State, Constitutional Amendments, and General State calendars analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

The House will consider a Local, Consent, and Resolutions Calendar today.

Bill Callegari
Chairman
83(R) – 77

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Monday, May 20, 2013
83rd Legislature, Number 77
Part One

SUBJECT: ERS contributions and benefits

COMMITTEE: Pensions — favorable, without amendment

VOTE: 6 ayes — Callegari, Alonzo, Branch, Frullo, P. King, Stephenson

0 nays

1 absent — Gutierrez

SENATE VOTE: On final passage, May 13 — 31-0

WITNESSES: *(On House companion bill, HB 1882)*
For — Maura Powers, AFSCME; Lindsay Vogtsberger, Cerner Corporation; (*Registered, but did not testify*: Doug Ervin, Cerner Corporation; Ann Hettinger)

Against — (*Registered, but did not testify*: Deborah Ingersoll, Texas State Troopers Association)

On — Gary Anderson, Texas Public Employees Association; Ann Bishop, ERS; Elizabeth Blount, Retired State Employees Organization; Shea Guinn, Game Warden Peace Officers Association; Ray Hymel, Texas Public Employees Association; Jimmy Jackson, Department of Public Safety Officers Association; Harry Nanos, Texas Alcoholic Beverage Commission Officers Association; Derrick Osobase, Texas State Employees Union; (*Registered, but did not testify*: Mike Ewing, ERS; Christopher Hanson, Pension Review Board)

DIGEST: SB 1459 would make numerous changes to the Employees Retirement System of Texas (ERS), including:

- raising the contribution rates for members and requiring a new contribution from state agencies;
- increasing the minimum retirement and the calculation of final average salary for employees hired after September 1, 2013;
- implementing tiered retirement health insurance premium contributions for employees who were not vested as of August 31,

2014; and
- separating the accounting and actuarial functions of ERS and the Law Enforcement and Custodial Officers Supplemental Retirement Fund (LECOSRF) for fiscal 2014-15.

Contribution rates. SB 1459 would phase in an increase in contribution rates for ERS members from 6.5 percent of the member's annual compensation to 6.6 percent in fiscal 2014, 6.9 percent in fiscal 2015, 7.2 percent in fiscal 2016, and 7.5 percent in fiscal 2017.

Contribution rates for members of LECOSRF would increase an additional 0.5 percent in each fiscal year.

Contribution rates for judges in Judicial Retirement System Plan 2 would increase from 6 percent to 6.6 percent in fiscal 2014, 6.9 percent in fiscal 2015, 7.2 percent in fiscal 2016, and 7.5 percent in fiscal 2017.

After September 1, 2017, member contribution rates would drop to correspond with any decrease in the state's contribution rate from the level set in fiscal 2015.

Beginning September 1, 2103, state agencies would make monthly contributions equal to 0.5 percent of their total payroll.

Pension benefit structure. For employees hired after September 1, 2013, the bill would:

- base their retirement annuity on the 60 highest months of compensation, rather than the 48- or 36-month calculations used for current employees, depending on when they were hired;
- set age 62 as the threshold below which a civilian retiree's annuity would be subject to a 5 percent reduction per year; and
- set age 57 as the threshold below which a law enforcement retiree's annuity would be subject to a 5 percent reduction per year; and
- eliminate unused sick and annual leave from calculations for retirement eligibility, and disallow annual leave for which an employee has been compensated from also being used to calculate pension benefit compensation.

Retiree health care. SB 1459 would implement tiered health insurance premium contributions for some future retirees. Employees with five years

of service as of August 31, 2014 would be exempted from these provisions.

Instead of covering 100 percent of the premium costs of employees who retire with 10 years of service, which is required under current law, SB 1459 would require the state to pay 100 percent of premium costs for those with 20 years of service; 75 percent for those with 15 years of service; and 50 percent for those with 10 years of service.

Other provisions. The bill would authorize a 3 percent cost-of-living increase for those who had been retired for 20 years if certain actuarial conditions were met.

It would decrease from 5 percent to 2 percent the annual interest on money in each member's individual account that is used to compute the amount paid when an employee withdraws accumulated funds in lieu of receiving a retirement annuity. The provision would apply only to interest accrued after January 1, 2014.

The bill would make a new employee eligible to participate in the group benefits program no later than the 90th day after the employee's first work date, rather than on the first day of the calendar month that begins after that 90th day.

SB 1459 would decrease from 40 to 30 the minimum number of hours per week an employee had to work in order to be considered a "full-time employee." It would add a definition of eligible dependents to include a child for whom the member served as managing conservator.

Retirees could opt to receive service credit instead of a lump-sum payment for accrued vacation time and could make changes related to divorce decrees.

ERS would be entitled to obtain criminal history record information on candidates for appointment or election to the ERS board or a board advisory committee. The information also would be allowed for consultants, contract employees, independent contractors, interns, and volunteers.

The bill would extend liability protection to advisory committee members appointed by the board.

ERS would be required to conduct an interim study on the feasibility of adding custodial officers employed by the Texas Juvenile Justice Department to LECOSRF.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1459 would put ERS back on the path to long-term solvency while allowing state employees to keep the benefits they have earned. All current employees would be grandfathered into the changes in retirement age and pension benefit structure. This would be a unique opportunity to correct course before pension costs become unsustainable. Groups representing active and retired state employees have expressed support for the bill.

The bill would increase employee contributions and provide incentives to the state to maintain a reasonable contribution rate. For too long, the state has been relying on investment gains without ensuring sufficient contributions. It also would create an opportunity for a cost-of-living increase to older retirees if the fund became actuarially sound in the future.

The bill would gradually increase employee contributions from 6.5 percent to 7.5 percent over the next five years so that state workers would not be burdened by a sharp increase. With the addition of the 0.5 percent state agency contribution, the total employer contributions would be 8.0 percent in fiscal 2015. Additionally, the budget conferees have a rider that would raise the fiscal 2014 state contribution from 6.5 percent to 7.5 percent contingent on enactment of SB 1459.

The proposed changes in minimum retirement ages for employees hired after September 1, 2013 are reasonable. Retirees are living longer, and the fund will be unsustainable if the Legislature does not modestly increase the retirement age. Law enforcement officers have physically demanding jobs and legitimately need to retire earlier than average civilian employees, and age 57 would be a good compromise.

Currently, employees who retire with at least 10 years of service receive 100 percent state-paid health insurance premiums. SB 1459 would make adjustments so that employees who spent only part of their careers with the state would share in this cost in retirement. This cost-sharing would be a step to help stabilize the health fund prior to next session, when major

changes will be necessary.

The bill initially would increase the ERS and LECOSRF actuarial costs because current employees are exempted from the benefit changes. Over the long term, however, the restructured benefits for new employees and higher contribution rates should begin to decrease the funds' actuarial costs.

The bill would lay the groundwork for establishing a separate pension fund to meet the unique needs of law enforcement officers. Separating the books for these two funds would provide an immediate actuarial benefit to the main ERS fund and a longer-term benefit to LECOSRF in the form of enhanced flexibility and faster growth.

A provision that would direct ERS to analyze and model what would be required actuarially and legally to include juvenile corrections officers in the LECOSRF would help lawmakers decide this issue.

OPPONENTS SAY:

SB 1459 would not adequately address the real problem of chronic state underfunding. For 18 of the past 20 years, the Legislature has failed to contribute at levels that could have made the fund actuarially sound.

The bill would lower the take-home pay of state employees, who already are paid less than their counterparts in the private sector. The increased ERS contributions would hurt the lowest-paid state workers the most.

Some current employees would not be grandfathered into changes in the retirement health care program. The bill would end a longstanding benefit of no-cost health insurance for employees who retire after working at least 10 years. SB 1459 would retain this benefit only for employees with at least 20 years of service, and those with less would pay 50 percent to 75 percent of the premium cost. This change would affect current employees with less than five years of service as of August 31, 2014.

The changes to pension and retiree health care could make it more difficult for the state to recruit employees. State workers generally are paid less than their counterparts in the private sector, but their pension benefits have long been viewed as an important part of their overall compensation.

OTHER OPPONENTS

SB 1459 represents a failed opportunity to make more significant changes that would improve the stability of ERS and LECOSRF. The inclusion of

SAY:

a cost-of-living increase for the state's oldest retirees is meaningless because it could not be paid until the fund became actuarially sound.

An earlier version of the bill would have lowered the actuarial costs of ERS by $989 million and represented a significant move toward actuarial soundness, according to the Legislative Budget Board (LBB). The difficulty in gaining a consensus to implement those changes resulted in a watered-down effort.

NOTES:

The LBB fiscal note said the bill would increase the ERS unfunded actuarial liability by about $406.1 million and decrease the funded percentage of the system from 79.3 percent to 78.3 percent. The funding period would remain "infinite," meaning that with current contributions to the plan, the unfunded liabilities cannot be eliminated, according to the LBB. However, due to increases in the total contribution rate, the LBB said the actuarial health of the plan would improve under the bill.

For LECOSRF, SB 1459 would increase the unfunded actuarial liability by about $29 million and decrease the funded percentage of the system from 77.2 percent to 75.2 percent. The funding period would remain infinite, LBB said. The actuarial analysis does not address the bill's impact on the Judicial Retirement System Plan 2.

SUBJECT: Authorizing tuition revenue bonds for higher education institutions

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 23 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, S. Davis, Giddings, Gonzales, Howard, Hughes, Longoria, McClendon, Muñoz, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

4 absent — Dukes, S. King, Márquez, Orr

SENATE VOTE: On final passage, April 23 — 31-0

WITNESSES: No public hearing

BACKGROUND: Tuition revenue bonds (TRBs), which institutions of higher education pledge future revenue (tuition and fees) to secure, generally are issued to fund capital projects such as institutional construction, renovation projects, equipment, and infrastructure. The Legislature must authorize issuance of TRBs and typically appropriates general revenue to reimburse institutions for the tuition used to pay the debt service.

DIGEST: CSSB 16 would authorize the issuance of $2.7 billion in tuition revenue bonds for institutions of higher education to finance construction and improvement of infrastructure and related facilities.

TRB bond authority. The bonds would be payable from pledged revenue and tuition and, if a board of regents did not have sufficient funds to meet its obligations, funds could be transferred among institutions, branches, and entities within each system or university. The bill includes TRB authorization for individual institutions and projects in the following university systems:

- University of Texas System ($928.7 billion);
- Texas A&M System ($622.4 million);
- University of Houston System ($252.8 million);

- Texas State University System ($213.6 million);
- University of North Texas System ($252.2 million);
- Texas Tech University System ($215.4 million);
- Texas Woman's University ($38 million);
- Midwestern State University ($24 million);
- Stephen F. Austin State University ($40 million);
- Texas Southern University ($52.8 million); and
- Texas State Technical College System ($43.6 million).

Bond authority for three of the projects that would be eligible for TRBs under the bill would be contingent on the passage of legislation to:

- create or authorize a new university that incorporated the University of Brownsville;
- authorize creation of a health sciences center in El Paso as part of the Texas Tech University System; and
- authorize an extension center of the Texas State Technical College System in Ellis County.

The bill would not affect any authority or restriction on the activities an institution of higher education could conduct in facilities funded through authorized TRB bonds.

Contingent effect. The bill would only take effect if the Legislature enacted:

- SB 1, the General Appropriations Act;
- HB 1025, supplemental appropriations for fiscal 2013; and
- SJR 1, constitutional amendment providing for the creation of funds to assist in financing priority projects in the state water plan.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 16 would support a wide range of critical facilities projects at higher education institutions throughout the state that play an important role in enhancing opportunities for a quality education. Renovations, repairs, upkeep, and new facilities are essential to the state's ability to provide a high quality and competitive education to Texas students.

Higher education institutions depend on state support for maintenance and expansion to keep pace with the exploding growth in student enrollment and to maintain and enhance the quality of education these students receive.

A highly skilled and well-educated workforce is vital to remaining economically competitive in a global marketplace. Texas has devoted much to creating and securing the reputation as providing a good environment for business. A world class workforce is a key part of this equation.

TRBs are the most cost-effective means of financing construction or improvements of durable capital infrastructure, and construct facilities that can be used while the debt is being paid off. The bonds would be pledged against university revenues and thus would pose little financial risk for the state. Interest rates on recent bond issuances, moreover, have been secured at remarkably low levels.

In addition, state appropriations for TRB authorizations have declined in recent years. According to a February, 2013, Legislative Budget Board presentation, total appropriations for revenue bonds declined to $593.1 million for fiscal 2012-13 from $625.3 million for fiscal 2010-11 and $672.3 million for fiscal 2008-09.

OPPONENTS SAY:

While many of the facilities proposed in CSSB 16 may be worthy and justifiable, the state should review closely how it finances capital improvements at public higher education institutions.

Tuition revenue bonds have become popular because they allow lawmakers to support more projects by paying only a small portion of the cost and leaving the remaining financial commitments for future legislatures and taxpayers. The bill would commit future legislatures to hundreds of millions of dollars in bond payments for the foreseeable future. According to the Legislative Budget Board, issuing the TRBs would have a significant impact of about $450 million on the fiscal 2014-15 biennium alone.

The Legislature should commit to TRBs only for emergency projects, which is not the standard of selection used in the bill. Institutions should have to include bond debt as part of their overall operating budgets, so the obligation of repaying the debt is not, in effect, transferred to taxpayers.

Committing the state to paying debt service for the foreseeable future entails certain unavoidable risks, due to unpredictable economic and fiscal conditions, and in this case is unnecessary. Capital needs at institutions of higher education can be satisfied without committing taxpayers to paying for debt for up to 20 years.

As demands on state government compete for limited resources, higher education institutions and future legislatures must be creative and proactive in funding capital projects, including offering incentives that encourage universities to better use space through online courses, night and weekend classes, and summer classes.

OTHER OPPONENTS SAY:

A provision in SB 16 would hold it hostage to the passage of other bills, most notably SJR 1 by Williams, which is unrelated legislation that would amend the Constitution to dedicate funding for certain water projects. Holding a bill hostage to another unrelated bill is unusual and sets a bad precedent. The Legislature should consider separate issues independently.

NOTES:

The Legislative Budget Board estimates SB 16 would have a negative impact of $450.2 million on general revenue for the fiscal 2014-15 biennium. The LBB estimates that the annual cost to general revenue through fiscal 2018 would be roughly $230 million after fiscal 2014.

SUBJECT: Functions and duties of the Texas Ethics Commission

COMMITTEE: Elections — committee substitute recommended

VOTE: 7 ayes — Morrison, Miles, Johnson, Klick, R. Miller, Simmons, Wu

0 nays

SENATE VOTE: On final passage, April 17 — 31-0

WITNESSES: (*On House companion HB 2737)*
For — Jim Clancy; Fred Lewis; Craig McDonald, Texans for Public Justice; Tom "Smitty" Smith, Public Citizen; Stewart Snider, League of Women Voters of Texas; (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition; JC Dufresne, Common Cause Texas; Jack Gullahorn, Professional Advocacy Association of Texas)

Against — None

On — Steve Bresnen; Ashley Fischer, Secretary of Texas; Tim Sorrells, Texas Ethics Commission; (Registered, but did not testify: John Jackson, Republican Party of Texas; Karl Spock, Sunset Commission)

BACKGROUND: The Texas Ethics Commission (TEC) was created in 1991 by voter approval of an amendment to the Texas Constitution (art. 3, sec. 24a). The commission's major functions include:

- maintaining financial disclosure reports and making them available to the public;
- investigating ethics and campaign finance complaints and assessing penalties when warranted;
- issuing advisory opinions interpreting laws under the agency's jurisdiction;
- providing information and assistance to stakeholders to help them understand their obligations under campaign finance and ethics laws; and
- registering persons engaged in lobbying at the state level and requiring periodic lobby activity reports.

TEC consists of a bipartisan eight-member commission, four appointed by the governor, two appointed by the speaker of the House, and two appointed by the lieutenant governor. The members are appointed from lists submitted by members of each political party of the House and Senate. The Constitution requires the appointments to be divided between each political party required to hold a primary. The commission maintained about 33 full-time staff in fiscal 2012.

The commission operated with an annual budget of about $2 million in fiscal 2011 and 2012 and is supported almost entirely by general revenue.

TEC underwent its last sunset review in 2003. It is subject to sunset review, but, as a constitutional agency, may not be abolished.

DIGEST:

CSSB 219 would make changes to TEC procedures primarily in four major categories, including investigation and enforcement, personal financial reporting, campaign finance reporting, and lobbying.

Investigation and enforcement activities. The bill would amend provisions relating to complaints filed with the commission, investigation of violations, and enforcement of ethics rules.

Violation categories. The bill would repeal the current "Category One" and "Category Two" violation categories and replace these with three categories of violations:

- technical, clerical, or de minimis violations;
- administrative or filing violations; and
- more serious violations.

The bill would require TEC to adopt rules defining what violations were included in each category. The bill would replace the term "sworn complaint" with "inquiry."

Response to an inquiry. The process for response to an inquiry by a respondent would be the same as the process for response to a sworn complaint. Technical, clerical, and de minimis violations would follow the existing rules for Category One violations, while administrative or filing violations or more serious violations would need to follow the existing rules for Category Two violations.

Preliminary review and resolution of an inquiry. TEC would need to adopt procedures by rule for the conduct of preliminary review of each category of violation. If an inquiry alleged more than one violation, the commission could choose to conduct a single preliminary review of all violations or a separate review of each violation. If an inquiry alleged violations of different categories, TEC staff would need to conduct a review according to the procedure for the most serious category alleged. If TEC determined that an inquiry was initially categorized incorrectly, it would continue the review according to the procedure for the correct category.

After conducting a preliminary review of an inquiry or motion, TEC staff would propose a resolution to the inquiry. The bill would provide the following resolutions for the violation categories:

- a letter of acknowledgement for technical, clerical, or de minimis violations;
- a notice of administrative or filing error for administrative or filing violations;
- a notice of violation for an inquiry or motion alleging a more serious violation.

TEC staff would need to resolve an inquiry or motion in the form corresponding to the most serious category of violation alleged in the inquiry or motion. Except as provided by other law, if the respondent accepted the resolution, TEC staff would submit the resolution letter or notice to TEC for approval.

TEC would need to adopt procedures for review of a submitted resolution letter or notice, and procedures for disposition of an inquiry if the respondent did not respond to the resolution.

If the respondent rejected the resolution or requested a hearing in writing, TEC would set a preliminary review hearing. This hearing would be conducted by a panel of two members of the commission. TEC would adopt rules for the selection of this panel. The rules would ensure that the panel was composed of two members of the commission and each member of the panel was a member of a different political party.

The resolution of a preliminary hearing would proceed in the same way it currently does except that:

- if the respondent refused the proposed resolution the panel would need to order a formal hearing;
- if the panel could not issue a decision because of a tie vote, the panel would need to order a formal hearing;
- if the respondent accepted a resolution, the panel would need to submit it to TEC for approval.

Formal hearings. The commission could hold formal hearings as it currently does or could delegate them to the State Office of Administrative Hearings. The final decision stating the resolution of a formal hearing would need to be in the form corresponding to the category of violation that was the subject of the hearing.

Judicial review. A respondent who had exhausted all administrative remedies could seek judicial review of the final decision by pursuing an appeal. It would be conducted in the manner provided for judicial review of a contested case and would be governed by the substantial evidence rule. The provision for bringing a trial de novo would be repealed.

Confidentiality and access by the public. Under the bill, a notice of administrative or filing error or a notice of violation that had been approved by the commission would not be confidential. An approved letter of acknowledgement would be confidential.

TEC would need to make a copy of a notice of administrative or filing error or notice of violation approved or issued by the commission available on the Internet as soon as practicable after a preliminary review, preliminary review hearing, or formal hearing. A notice of dismissal or decision that there was no violation could be made available on the Internet at the request of the respondent and upon a waiver of confidentiality.

Civil penalties. TEC would adopt guidelines for imposition of a civil penalty. The guidelines would need to take into account the same factors as when assessing a sanction. TEC would be required to impose a civil penalty on a respondent who was issued a notice of administrative or filing error or a notice of violation, but could not impose a civil penalty on a respondent who was issued a letter of acknowledgement. When imposing a civil penalty, TEC would not need to consider any penalties previously proposed to the respondent.

TEC would need to adopt any rules necessary in this section not later than December 1, 2013. The changes made in this section would apply only to complaints or motions after that date.

The bill would make conforming amendments to reflect terminological and procedural changes.

Personal financial reporting. The bill would add a requirement that any personal financial statement filed by a state officer, candidate for an office as an elected officer, or party chairman would need to be filed by computer diskette, modem, or other means of electronic transfer, using computer software that met TEC specifications or was provided by the TEC. TEC would be required to develop or approve this software as soon as practicable after the effective date of the act. This software would need to conform with the requirements for other e-filing software. TEC would be required to design forms that could be used for filing a financial statement with an authority other than the commission.

The following individuals, if required to file financial statements, would be able to do so via e-mail:

- municipal officers and candidates for municipal office;
- county officers and candidates for a county office;
- justices of the peace and candidates for justice of the peace; and
- county officers, precinct officers, county judicial officers, candidates for these offices, and county employees.

The authority receiving these statements could prescribe guidelines for filing by e-mail. The current timeliness provisions would apply to those who did not file by e-mail.

The bill would repeal or modify references and requirements relating to mailing notices and statements, the U.S. Post Office and common or contract carriers, and postmarks. Affected requirements would be conformed to comply with e-filing, and providing electronic notice instead of mailing.

The bill would repeal the defense to prosecution for failing to file a financial statement if a person did not receive mailed copies of the financial statement form. This repeal would apply only to an offense committed on or after the effective date of the bill.

Home address on a personal financial statement. The bill would require TEC to remove the home address of a district attorney from a personal financial statement before permitting a member of the public to view the statement or providing a copy to a member of the public. This would apply to any financial statement that TEC maintained on file and that was accessible to the public on or after the effective date of the act.

Once TEC determined that the computer software required for e-filing included features that allowed TEC to easily and quickly redact information in the statement, the bill would require TEC to remove the home address of any person from a personal financial statement from that date forward before permitting a member of the public to view the statement or providing a copy to a member of the public.

Campaign finance. The bill would create e-filing requirements for campaign finance reporting. It would amend the kinds of parties required to file reports and procedures for filing and would create a user fee for filers.

User fee. CSSB 219 would require an annual fee from each candidate, officeholder other than the secretary of state, or political committee that was required to file a financial statement under campaign regulations. The fee requirement would not apply to:

- a candidate, officeholder, or specific-purpose committee who filed reports with an authority other than TEC; or
- a candidate or officeholder who filed a petition in lieu of the filing fee with the person's application for a place on the ballot.

The commission would need to adopt rules to implement the fee and determine the amount of the annual fee necessary for the administration of campaign finance reporting in an amount not to exceed $100.

Legislative caucuses. Each legislative caucus would be required to appoint a caucus chair and file the appointment with TEC not later than September 15, 2013. The appointment would need to be in writing and include the caucus's name, address, and telephone number, the chair's name, and the name of the person making the appointment. The caucus would need to notify TEC in writing of any change of its mailing address within 10 days. The chair would be responsible for filing the caucus's reports.

The chair would need to file a report of contributions and expenditures under the current reporting requirements by October 1, 2015 that would cover the period between July 1, 2013 and September 15, 2013. The chair would need to file a report by January 15, 2013 under the bill's requirements that would cover the period between September 15, 2013 and December 31, 2013. Caucus chairs would not be responsible for reporting or maintaining records of activity before September 15, 2013.

Principal political committees. Candidates and officeholders required to file a campaign treasurer appointment would be allowed to designate a specific-purpose committee as their principal political committee with the responsibility of filing any required reports. This designation would need to be in writing and filed with TEC. A candidate or officeholder could designate only one specific-purpose committee and a specific-purpose committee could be designated by only one candidate or officeholder under this provision.

A candidate who exercised this option would not be required to appoint a campaign treasurer under the existing provisions. A candidate who exercised this option would not be required to file a report during a reporting period if their principal political committee reported all of the activity that would otherwise be required, including:

- the amount of any political contribution, including a loan, made by the candidate to the principal political committee; and
- the amount of any political expenditure made by the candidate from personal funds and whether the candidate intended to seek reimbursement.

E-filing. Under the bill, a candidate, officeholder, or committee who had exceeded the threshold requiring e-filing once would be required to e-file permanently.

A legislative caucus could opt out of e-filing if:

- the caucus chair filed an affidavit stating that the caucus, an agent of the caucus, or a person with whom the caucus contracted did not use computer equipment to keep the current records of contributions and expenditures; and
- the caucus had never, in a calendar year, accepted contributions or

made expenditures that exceeded $20,000.

The affidavit would need to be filed with each report filed and would need to include a statement that the caucus understood the conditions that would disqualify it from opting out.

Reporting schedule. The schedule for a general purpose committee that was required to file reports monthly would be amended. Reports would cover the period from the first calendar day to the last calendar day of each month rather than the 26th day through the 25th day. They would need to be filed no later than the 10th day rather than the fifth day of the month.

The bill would make an amendment to conform with the Judicial Campaign Fairness Act to specify that a contribution made by a spouse of an individual would not be considered a contribution by the individual. This would apply only to a contribution made on or after the effective date of the bill.

Changes to reporting requirements would apply only to reports required to be filed on or after the effective date of the act.

Lobbying. The bill would amend provisions relating to lobbying registration and lobbyist expenditure reports.

Threshold to require registration. Under the bill, a person would not be required to register as a lobbyist if the person was compensated or reimbursed for no more than 26 hours in a calendar quarter engaging in activity to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. If a person spent more than eight hours in one day engaging in such activity, they would be considered to have engaged in that activity for only eight hours during that day. TEC would be able to determine an amount of time, other than the 26 hours specified, spent engaging in this activity to trigger registration requirements.

The bill would specify that the definition of "communicates directly with a member of the legislative or executive branch to influence legislation or administrative action" included establishing goodwill with the member for the purpose of later communicating with the member to influence legislation or administrative action.

The registration requirements would apply only to a registration or renewal to be filed on or after the effective date of the bill.

"Legislative advertising" would not include material that was printed or published by a member of the legislative branch and that was only disseminated by a member of the Legislature on the floor of either house.

A person who was not a registrant who made a portion of a joint expenditure on another person's behalf would not be considered to have made an expenditure for purposes of bribery offenses. The bill would state that this was intended to clarify, rather than change, existing law.

Filing of reports and registration. Expenditure reports filed by lobbyists would need to include events to which:

- a legislative committee and the staff of the committee were invited;
- all state senators and their staff were invited;
- all state representatives and their staffs were invited;
- all legislative staff were invited.

This would be required only for reports filed on or after the effective date of the bill.

A person who had ever used the e-filing system to file registration or activity reports would not be allowed to file a paper registration or report.

An amended registration during the legislative session would only need to require the names and addresses, subject matter of the legislation or administrative action that was the subject of the communication, and amount of compensation paid.

General procedures. *Notice.* The bill would require TEC to adopt rules prescribing how it would notify any person or provide any notice required under its governing statutes. It would repeal requirements relating to mailing notice by registered or certified mail, and modify other notice requirements to conform with this requirement.

Confidentiality of electronic data. The requirements for e-filing software would be amended to specify that electronic report data saved in a temporary storage location for later retrieval and editing before the report was filed would be confidential and could not be disclosed. After the

report was filed, the information would be subject to the law requiring the filing of the report.

Effective date. The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 219 would make progress in correcting inefficiencies that currently exist in the Texas Ethics Commission's operations. By providing for e-filing, the bill would bring the commission's reporting statutes into the 21st century, reducing postage costs and making reporting easier and more efficient for the parties reporting and the entities receiving reports. The user fee that TEC may charge for certain e-filers would help TEC maintain its software without requiring constant budget appropriations. Updates in the violation categories and review procedures would fix some of the uncertainties, obscurities, and conflicts in the review and enforcement process. The three-tier violation system and updated resolution options would help the public and the parties involved distinguish between minor infractions and more serious violations and would help to mitigate abuse of the review process.

Additionally, the Legislative Budget Board's fiscal note indicates that the bill would have a positive fiscal impact to the general fund of $212,500 a year, based on a campaign finance fee that TEC could impose on the estimated 4,250 reports it receives a year. (In this example, TEC would set the filing fee at $50; the bill would set a $100 limit.)

Concerns that the bill should do more are misplaced. Sunset review is not the appropriate venue for changing underlying rules that an agency enforces or for making policy choices. The Sunset process is intended only to improve the operation and efficiency of an agency, in this case TEC. Changes in policy revolving door provisions, disclosure of certain political contributions, audit requirements, and public judicial campaign funding, among other ideas, should be implemented via the legislative process in stand-alone bills. Many of these issues in fact have been proposed in separate legislation and the Legislature has had the opportunity to consider them independently. Other changes that should be implemented could be determined by an interim study.

Lobbyist registration trigger. Changes in lobbyist oversight would clarify and codify some of the existing rules to give registrants better notice of when they needed to register and what they needed to report. The 26-hours-in-a-calendar-quarter time trigger is consistent with the current

rule that exempts from registration a person who spends less than 5 percent of a normal full-time work schedule in a quarter lobbying. A shift to a compensation trigger or other rule would be a policy change and would be more appropriate to address in a stand-alone bill.

OPPONENTS SAY:

CSSB 219 should go further. TEC is an ineffectual agency that does not accomplish its intended constitutional purposes. This bill should make stronger changes in order to ensure that the commission has the power and the directive to enforce Texas campaign finance and ethics rules.

The bill should implement several additional changes. It should institute provisions to prevent legislators from cycling through the revolving door of leaving public office, lobbying, and then re-running for office. It should require TEC to perform random, in-depth audits of financial reports to ensure compliance and incentivize more careful reporting. It also should require political contributions by certain non-profit organizations to be publicly disclosed. It also should provide for public financing for judicial campaigns. Judges should not need to rely on their ability to raise funds to effectively run for office. These funds could be raised through a surcharge on State Bar of Texas dues.

Lobbyist registration trigger. The bill would impose an ineffective and unenforceable 26-hours-a-quarter trigger for lobbyist reporting. By providing for a time trigger, the bill would ensure that a person who wanted to lobby without registering could circumvent the registration process. Proving how a person spent their time and whether it qualified under the language in the bill would be more difficult than providing a compensation or earnings trigger, which could be investigated more easily.

SUBJECT: Constitutional amendment creating funds to finance water projects

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 17 ayes — Pitts, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, S. Davis, L. Gonzales, Hughes, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

4 absent — Dukes, S. King, Márquez, Orr

6 present, not voting — Sylvester Turner, Giddings, Howard, Longoria, McClendon, Muñoz

SENATE VOTE: On final passage, April 23 — 31-0

WITNESSES: No public hearing

BACKGROUND: The State Water Plan is designed to meet water needs during times of drought. Its purpose is to ensure that cities, rural communities, farms, ranches, businesses, and industries have enough water during a repeat of the 1950s drought conditions. In Texas, each of 16 regional water-planning groups is responsible for creating a 50-year regional plan and refining it every five years so conditions can be monitored and assumptions reassessed. The Texas Water Development Board (TWDB) develops the state plan, which includes policy recommendations to the Legislature, with information from regional plans.

The 2012 state water plan includes the cost of water management strategies and estimates of state financial assistance required to implement them. Regional water-planning groups recommended water management strategies that would account for another 9 million acre-feet of water (an acre-foot of water is 325,851 gallons) by 2060 if all strategies were implemented, including 562 unique water supply projects. About 34 percent of the water would come from conservation and reuse, about 17 percent from new major reservoirs, about 34 percent from other surface water supplies, and about 15 percent from various other sources.

Among TWDB's recommendations to the Legislature to facilitate implementation of the 2012 state water plan is the development of a long-term, affordable, and sustainable method to provide financing assistance to implement water supply projects.

Existing state funding for water management strategies within the state water plan relies primarily on general obligation bond issuances that finance loans to local and regional water suppliers. On November 8, 2011, voters approved a constitutional amendment (Proposition 2) authorizing additional general obligation bond authority not to exceed $6 billion at any time. With this authority, the TWDB may issue additional bonds through ongoing bond authority, allowing it to offer access to financing on a long-term basis. Bonds issued by the TWDB are either self-supporting, with debt service that is met through loan repayments, or non-self-supporting, which requires general revenue to assist with debt service payments, as directed by the Legislature through the appropriations process.

DIGEST:

CSSJR 1 would propose a constitutional amendment to create the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT) as special funds in the state treasury outside the general revenue fund.

Money in the funds would be administered, without further appropriation, by the Texas Water Development Board (TWDB) for the purpose of implementing the state water plan, with oversight by the Legislative Budget Board.

Money in the funds and any money appropriated from the Economic Stabilization Fund (Rainy Day Fund) would be dedicated for the purpose of complying with constitutional provisions regarding the spending cap.

The SWIFT and the SWIRFT would consist of:

- money transferred or deposited by law to the credit of the fund, including money from any source transferred or deposited at the TWDB's discretion;
- the proceeds of any fee or tax imposed by the state that by statute was dedicated for deposit to the credit of the fund;
- any other revenue that the Legislature by statute dedicated for deposit to the credit of the fund;

- investment earnings and interest earned on amounts credited to the fund; and
- money transferred to the SWIFT under a bond enhancement agreement and proceeds from the sale of bonds, including revenue bonds, to provide money for the SWIRFT.

The Legislature, by general law, could allow the TWDB to enter into bond enhancement agreements to provide additional security for general obligation bonds or revenue bonds, the proceeds of which would be used to finance state water plan projects. The TWDB could also provide direct loans for water projects in the state water plan.

The Legislature, by general law, could allow the TWDB to issue bonds and enter into related credit agreements payable from all revenues available to the SWIRFT.

Any bond enhancement agreements or obligations would have to be payable solely from the SWIFT or from revenues of the SWIRFT and would not be constitutional state debt from the general revenue of the state.

The TWDB would be required, each fiscal year, to set aside amounts sufficient to make payments that became due that fiscal year.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment providing for the creation of the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas to assist in the financing of priority projects in the state water plan to ensure the availability of adequate water resources. "

SUPPORTERS SAY:

CSSJR 1 would constitutionally create two funds for the implementation of water projects in the state water plan. CSSJR 1 would work together with two bills under consideration by the 83rd Legislature — HB 4 by Ritter and HB 1025 by Pitts. HB 4 would contain the mechanics of the funds, including the prioritization of projects that would receive funding, and HB 1025 would make the appropriation from the Rainy Day Fund for the initial capitalization of the SWIFT.

CSSJR 1 would constitutionally create the SWIFT to assist in the financing of priority projects in the state water plan. The SWIFT would

serve as a water infrastructure bank to enhance TWDB's financing capabilities. The fund would be used to provide a source of revenue or security and a revolving cash flow mechanism that would recycle money back to the fund to protect the corpus. Money in the fund would be available immediately to provide support for low-interest loans, longer loan repayment terms, incremental repurchase terms for projects in which the state owned an interest, and deferral of loan payments. CSSJR 1 also would constitutionally create the SWIRFT to manage revenue bonds issued by the TWDB and supported by the SWIFT.

These funds would be special funds created inside of the treasury but outside of the general revenue fund, without further appropriation, but with oversight from the Legislative Budget Board. CSSJR 1 would ensure that establishing these funds would not create state debt by providing that any bond enhancement agreements or obligation would be payable solely from the two funds and would not be constitutional state debt from the general revenue of the state. Also, money in the funds would be constitutionally dedicated. Any money appropriated from the Rainy Day Fund also would be dedicated for the purpose of complying with constitutional provisions regarding the spending cap.

According to TWDB, critical water shortages will increase over the next 50 years, requiring a long-term, reliable funding source to finance water and wastewater projects. The state water plan has identified projects intended to help avoid catastrophic conditions during a drought, but rising costs for local water providers, the capital-intensive investment required to implement large-scale projects, and the financial constraints on some communities necessitate a dedicated source of funding to help develop those projects. The capital cost to design, build, or implement the recommended strategies and projects between now and 2060 will be $53 billion. Municipal water providers are expected to need nearly $27 billion in state financial assistance to implement these strategies. Any delay in funding would put long-term planning of water projects in jeopardy and increase the overall cost to customers.

Unless the state fully implements its state water plan, 50 percent of Texans by 2060 will lack an adequate supply of water during times of drought. Without an adequate supply of clean, affordable water, the state's economy and public health would be irrevocably harmed. Water shortages during drought conditions cost Texas business and workers billions of dollars in lost income every year. If Texas does not implement the state

water plan, those losses could grow to $116 billion annually. Until the state identifies and dedicates a permanent source of revenue to pay for the water infrastructure projects outlined in the state water plan, the future of the state's water supply will be in jeopardy.

The Rainy Day Fund would provide an ideal source of funding for the initial capitalization of the SWIFT. This investment would seed a revolving fund that could grow with limited need for further state allocations. A one-time, $2 billion capitalization of the SWIFT could be used in conjunction with the TWDB's existing $6 billion evergreen bonding authorization to provide a meaningful funding solution for larger Texas water projects and financing for many of Texas' smaller communities. Without the initial capitalization of $2 billion from the Rainy Day Fund, revenue would have to be raised elsewhere, such as with a fee or tax.

Providing a funding program for water infrastructure to ensure an adequate water supply would be an appropriate use of the Rainy Day Fund. It was created as a savings account from which the Legislature may appropriate funds in times of emergency, and the state is on the cusp of a drought worse than the 1950s drought of record.

Use of the Rainy Day Fund would not jeopardize the state's credit rating or ability to handle an emergency. The Rainy Day Fund is expected to reach $11.8 billion by the end of fiscal 2015, according to the comptroller's January 2013 Biennial Revenue Estimate. A transfer of $2 billion from the fund would leave a comfortable balance for handling an emergency while preserving the state's superior credit rating. Given that the boom in the oil and gas sector shows no sign of slowing, any funds appropriated from the Rainy Day Fund would be quickly replenished. Not spending down the fund could result in its eventual spillover into general revenue for general-purpose spending.

While many entities that could benefit from the loan program created by CSSJR 1 and HB 4 have the credit rating to complete a project without state assistance, financing projects through the SWIFT would offer an incentive of buying down their interest rate in order to encourage development and build-up of projects ahead of the critical need. Entities with the necessary credit rating to finance projects on their own would not typically be interested in using state financial assistance due to the administrative burden and additional oversight involved.

While much of the concern surrounding funding for water supply projects is centered on the debate over which critical need of the state is most deserving, compromises have been reached within the budget to ensure that other priorities, such as education, also receive the necessary funding. Stripping education and transportation from the resolution would allow the voters to make a decision solely on the merits of financing water supply projects rather than tying all of the these important issues together.

OPPONENTS SAY:

While CSSJR 1 would allow the voters to authorize the funds that would finance water projects in the state water plan, the proposed ballot language is very broad and would not clearly illustrate to the voters the amount and source of the money intended to finance the newly created funds. CSSJR 1 would not appropriate any money, but the proposal envisions that the SWIFT would be capitalized initially by a one-time, $2 billion transfer from the Rainy Day Fund. The supplemental budget bill, HB 1025 by Pitts, is the intended vehicle to make the necessary appropriation from the Rainy Day Fund.

Constitutionally dedicating the money in the funds would preserve the spending cap, but the Rainy Day Fund would still not be an appropriate source of funding. Taking $2 billion out of the fund would all but ensure a downgrade of the state's superior credit rating and would curtail the state's ability to deal with a revenue shortfall, a natural disaster, or a school finance case decision that required additional state spending on public education.

Further, funding another water lending program would be an unnecessary and inefficient use of Rainy Day funds because entities needing water infrastructure project funding already have tremendous access to capital. TWDB has several lending programs for water infrastructure through bonding programs that use the state's credit rating to guarantee water debt, enabling TWDB to offer inexpensive financing on a long-term basis. Also, TWDB recently received approval for ongoing general obligation bond authority not to exceed $6 billion at any time.

OTHER OPPONENTS SAY:

At one point in the legislative process, this resolution proposed a constitutional amendment that would transfer Rainy Day funds for capitalization of the SWIFT ($2 billion), transportation ($2.9 billion), and education ($800 million). The bill is now shorn of any money for water and any mention of transportation and education. Much of the concern

surrounding funding for water supply projects is centered on the debate over which critical need of the state is most deserving of Rainy Day funding. While water infrastructure is a critical need for the state, funding roads and education also are high priorities.

NOTES:

According to the fiscal note, the cost to publish the resolution would be $108,921.

The committee substitute differs from the Senate-engrossed resolution in that funding for water projects and the provisions regarding funding for education and transportation do not appear in CSSJR 1.

HB 4 by Ritter, contains the mechanics of the funds, such as the prioritization of projects. HB 4 passed both houses and is awaiting conference committee. Both House and Senate conferees have been appointed. The HRO analysis of HB 4 appears in the March 27 *Daily Floor Report*, Number 41.

HB 1025 by Pitts passed the House on April 26 and was heard in public hearing in the Senate Finance Committee on May 17. The HRO analysis of HB 1025 appears in the April 26 *Daily Floor Report*, Number 60.

SUBJECT: Creating select interim committee to review ethics laws

COMMITTEE: Elections — committee substitute recommended

VOTE: 7 ayes — Morrison, Miles, Johnson, Klick, R. Miller, Simmons, Wu

0 nays

SENATE VOTE: On final passage, April 18 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion HB 3621)*
For —Jim Clancy; (*Registered, but did not testify*: Jack Gullahorn, Professional Advocacy Association of Texas; Michael Schneider, Texas Association of Broadcasters)

Against — None

On — Ashley Fischer, Texas Secretary of State; Tom "Smitty" Smith, Public Citizen; (*Registered, but did not testify*: John Jackson, Republican Party of Texas)

DIGEST: SB 1773 would create a select interim committee to study and review the statutes and regulations related to ethics, including campaign finance laws, lobby laws, and personal financial disclosure laws. The study would need to consider:

- the purposes of the current laws and whether the laws accomplish those purposes;
- the effectiveness of the current laws; and
- what changes, if any, should be made to more effectively accomplish the purposes of the laws.

The committee would be composed of nine members as follows:

- three senators and one member of the public appointed by the lieutenant governor;
- three state representatives and one member of the public appointed by the speaker of the House of Representatives; and

- the presiding officer of the Texas Ethics Commission.

The lieutenant governor and the speaker of the House would need to appoint the members of the committee no later than 60 days after the effective date of the act. They would appoint one senator and one representative, respectively, to be co-chairs of the committee.

The committee would convene at the call of the co-chairs. It would have all the powers and duties provided to special or select committees and the Texas Legislative Council and Texas Ethics Commission would provide any staff and resources necessary.

Not later than December 20, 2014, the committee would be required to report its findings and recommendations to the lieutenant governor, speaker of the House, and the governor. The study would include recommendations for specific statutory and rule changes.

The bill would take effect September 1, 2013. The committee would be abolished and the bill would expire December 21, 2014.

SUPPORTERS SAY:

SB 1773 would help update and fix existing problems with Texas's ethics laws. Many ethics laws are out of date and don't have reasonable provisions to address modern technology and modern ethical quandaries. Financial reporting, for example, covers only certain types of income and may not give a clear picture of what financial assets and conflicts certain elected officials may have. The Texas public has voiced dissatisfaction with the current ethics rules and enforcement, and it is clear they need intensive study and revision. This bill would provide that study and allow a committee to provide recommendations that could be implemented by future legislatures.

The committee created by the bill would be the most appropriate vehicle for these reforms. While some may suggest that the Texas Ethics Commission is not performing correctly and these issues could be resolved in the Sunset review of that agency, Sunset review and a Sunset bill are not the correct vehicle for policy choices. TEC is tasked with enforcing the statutes as they stand. Changes in underlying ethical policies and rules enforced by the TEC deserve separate, intensive consideration and should be implemented by a stand-alone bill.

The composition of the committee would provide an appropriate amount

of inclusiveness and expertise. A smaller committee would not provide enough representation and inclusiveness, particularly for an issue as important as our ethics laws. Many members are passionate about ethics laws, and because of this the committee would not suffer a lack of focus due to size. The major stakeholders in ethical issues are legislators and the public, so the makeup of the committee would represent both of these parties.

OPPONENTS SAY:

The committee created by the bill should be smaller. Large interim committees often result in a lack of focus, and this committee would be no different. The committee should remain small in order to ensure it produces a good, useful study.

The committee should include professional ethicists and people with ethics enforcement or advising experience. These professionals would give the most effective advice and recommendations and would help the committee better understand its mission and its recommendations.

Finally, the committee should include two members of the Texas Ethics Commission. The TEC is traditionally bipartisan, so including two members would preserve the bipartisan nature and reflect the interests of both parties.

NOTES:

The committee substitute differs from the Senate version by providing for appointed co-chairs rather than one presiding officer elected by the members.

The companion bill, HB 3621 by D. Bonnen, was left pending in the House Committee on Elections on April 15.

SUBJECT: Revising provisions that govern property tax lending

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman

0 nays

SENATE VOTE: On final passage, March 12 — 31-0

WITNESSES: For — Thomas Bonura, Protect my Texas Property; Charles Brown, Hunter Kelsey of Texas LLC; Fred Brown, and Mary Doggett, Texas Property Tax Lienholders Association; John Fleming, Texas Mortgage Bankers Association; John Heasley, Texas Bankers Association; Laura Kane, Crockett National Bank; Jack Nelson, Propel Financial Services; Mark Ridley; Steve Scurlock, Independent Bankers Association of Texas; (*Registered, but did not testify:* James Collins; Daniel Gonzalez, Texas Association of Realtors; Janet Arnold, Sherry Houston, Sheryl Wright, Jill Squier, and Peter Squier, Protect My Texas Property; Donald Lee, Texas Conference of Urban Counties; Emily Rickers, Alliance for Texas Families; Doug Ruby, Texas Property Tax Lienholders Association; Jim Short, Harris County and Ft. Bend County; Chelsey Thomas, Texas Association of Realtors; Michael Vasquez, Texas Conference of Urban Counties; Chris Young, Linebarger Goggan Blair & Sampson, LLP)

Against — None

On — *(Registered, but did not testify:* Leslie Pettijohn, Office of the Consumer Credit Commissioner)

BACKGROUND: Under Tax Code, sec. 32.06, a person is allowed to authorize another person to pay property taxes imposed by a taxing unit on that person's behalf. A tax lien can be transferred to the person who pays the taxes on behalf of the property owner for:

- taxes that are delinquent at the time of payment; or
- taxes that are not delinquent at the time of payment if the property was not subject to a recorded mortgage lien, or a tax lien transfer

consented to by the property owner was executed and recorded for one or more prior years on the property.

Finance Code, ch. 351, known as the Property Tax Lender License Act, requires anyone engaged in property tax lending to be licensed by the Consumer Credit Commissioner and abide by rules adopted by the Finance Commission.

DIGEST:

SB 247 would revise and expand Finance Code, ch. 351 provisions governing property tax lenders and property tax lending. The Finance Commission would adopt rules to implement various provisions in the bill.

Restrictions on liens. The bill would prohibit tax lien transfers for those over 65 who were eligible to claim a homestead property tax exemption. Anyone who succeeded in holding the interest of a property tax lender would have to abide by rules that govern property tax lenders. A property owner could not waive or limit a requirement imposed on a property tax lender except as specifically permitted.

The bill would void any contract between a property tax lender and a property owner that claimed to authorize a payment of taxes that were not delinquent or due at the time of the agreement, or any contract without a properly executed agreement from the property owner. It also would delete language allowing a tax lien to be transferred for taxes that were not delinquent if a tax lien transfer consented to by the property owner was executed and recorded for one or more prior years on the property.

A tax lien could not be transferred to a property tax lender on behalf of property owner whose property was:

- financed, in whole or in part, with a grant or below market rate loan provided by a governmental program or nonprofit organization and was subject to the covenants of the grant or loan; or
- subject to a lien by a municipality that incurred expenses for securing, vacating, removing or demolishing a dangerous building.

Rights to a property tax loan could not be sold, transferred, assigned, or released to someone who was not licensed under the Finance Code.

Advertisements. A lender who solicited property tax loans by print or electronic media would have to include on the first page of all solicitation

materials a prescribed notice indicating that a tax office may offer delinquent tax plans at a lesser cost. A similar notice would be required for television or radio broadcast advertisements. A property tax lender could not make a false, misleading, or deceptive statement with regard to a rate, term, or condition of a property tax loan.

A property tax lender who referred to a rate or charge in an advertisement would have to state the rate or charge fully and clearly. An advertisement would include the annual percentage rate for a finance charge. If a rate was subject to change, an advertisement would have to state as much. An advertisement could only refer to a simple annual rate that was applied to the unpaid balance of a property tax loan in conjunction with the annual percentage rate.

A lender who violated the law could be assessed an administrative penalty, regardless of whether the violation was intentional.

Other provisions. The bill would strike language allowing a property tax lender to foreclose for a tax lien after obtaining a court order under Rule 736, Texas Rules of Civil Procedure. Under the bill, a property tax lender could only foreclose a lien in the manner provided for such a foreclosure by law.

A lender with an existing recorded lien on a property could request a payoff statement before a tax loan became delinquent. A property tax lender would have at least seven days to deliver the payoff statement. The Finance Commission could assess a fine for a property tax lender who willfully failed to provide the payoff statement.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 247 would be a compromise bill that would enhance protections for property owners and increase honesty in business practices without placing undue burdens on property tax transfer businesses (property tax lenders), who have come to fill an important niche in the tax delinquency landscape.

The bill would add key restrictions and tighten and bolster statutory provisions governing property tax lenders. Significant measures would

include:

- prohibiting property tax lending for seniors who had the option of deferring taxes and abating lawsuits filed to collect delinquent taxes under Tax Code, sec. 33.06;
- honesty in advertising regulations similar to those that apply to mortgage lenders clearly stating interest rates and distinguishing annual percentage rates;
- solicitation notice requirements for a statement informing property owners that installment plans may be available to them from their local tax assessor-collector;
- eliminating property tax lenders' ability to foreclose a tax lien through a non-judicial foreclosure process that involves getting a court order and selling the tax lien interest at a public auction;
- ensuring that anyone who purchased a loan from a property tax lender would be held to the same restrictions as the original lien holder;
- prohibiting property owners from signing contracts that waive rights guaranteed in statute; and
- specifically voiding contracts that did not adhere to provisions in the bill.

The bill wisely would avoid any measures that significantly increased the cost of doing business or prevented property tax lenders from providing services to property owners in need. Measures that significantly increased costs would be transferred to property owners. Proposed legislation that would include more extreme measures, such as allowing a local entity to bar a property tax lender from receiving a title from a taxing unit, would greatly hamper these businesses and force the growing number of people who make use of property tax lender services into collections, a negative outcome for all parties.

Property tax lenders have emerged in response to a clearly defined demand in their respective communities for property tax payment assistance. These businesses present a needed alternative for families and individuals unable to pay their property taxes. For those who find themselves with delinquent taxes and no ability to pay, there are three options aside from going through a property tax lender: 1) borrow from friends or family; 2) put the dues on a credit card; or 3) enter into a payment plan with the county assessor-collector. For many homeowners, none of these are realistic options. Friends or family may have little to spare; credit cards charge

high interest and credit may be limited; and many assessor-collectors ask for a 20 percent down payment and offer payment plans for only three years.

For many, a fourth option is preferable: enter into an agreement with a property tax lender and repay the dues over five to seven years. This avoids the hefty penalties that accrue on late property tax payments and puts the owner in good standing with the taxing unit. The property tax lender assumes the tax lien and offers terms to the property owner that are much more flexible than those offered by the assessor-collector. In addition, interest rates charged by property tax lenders are regulated by the Consumer Credit Commissioner and have declined in recent years due to increased competition.

Property tax lenders offer a good solution for individuals and families experiencing short-term financial difficulties. The growth of the industry is testament to the need for these property tax payment options.

OPPONENTS SAY:

SB 247 would not go far enough in taking measures to allow local entities to curb tax transfers in areas where abusive property tax lending practices have taken hold.

Taxing units should have the ability to make their own decisions about what happens with their tax liens. Other legislation proposed during the 83rd session, HB 2687 by E. Rodriguez, would have provided the necessary statutory authorization to ensure the governing body of a taxing unit could prohibit the transfer of a tax lien without its consent. Under current law, tax liens are transferred without the taxing unit that held the lien authorizing or being aware of this transfer.

The Office of the Consumer Credit Commissioner estimated that there was an astounding 87.8 percent increase in the total dollar value of loans made through property tax lending companies from 2008 to 2011. The vast majority of tax transfers, 85 percent, involved residential properties. Property tax lenders enter into agreements with property owners to pay delinquent property taxes. Upon paying the delinquent taxes to a county assessor-collector, the property tax lender is provided with the lien.

The trouble with this practice is that the transfer of the tax lien gives the private company the ability to foreclose on someone’s home to collect the tax lien. As such, the private entity is essentially performing a government

function (foreclosing to collect taxes owed) on behalf of the governmental entity. This all happens without the consent or the knowledge of the taxing unit, a blind spot the Legislature should take measures to correct.

SUBJECT: Training educators to carry concealed handguns on school premises

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 6 ayes — Pickett, Fletcher, Dale, Flynn, Sheets, Simmons

0 nays

3 absent — Cortez, Kleinschmidt, Lavender

SENATE VOTE: On final passage, April 17 — 28–3 (Garcia, Rodriguez, Watson)

WITNESSES: No public hearing

BACKGROUND: Penal Code, sec. 46.03(a)(1) prohibits individuals from taking firearms onto the premises of schools and educational institutions, although districts may permit exceptions through written regulations or authorizations.

DIGEST: SB 17 would add subchapter J to Education Code, ch. 37 to create a safety training program for school district or open-enrollment charter school employees licensed to carry concealed handguns.

The Department of Public Safety (DPS) and Advanced Law Enforcement Rapid Response Training Center (ALERRT) at Texas State University-San Marcos would develop the training program and make it available to school employees selected to carry a handgun on school premises under the district's written policy.

The training program would be provided each school year at no charge for two employees at a school campus that did not have security personnel or a full-time commissioned peace officer. The department could provide training to additional employees for a fee.

The bill would create a special fund in the state treasury which could be used by DPS to solicit donations for the safety program. DPS would be required to use donated funds before using any state funds, which would not exceed $1 million in any biennium. DPS would conduct the training

only if sufficient funds were available.

A district or charter school could not require an employee to participate or take disciplinary action against an employee who refused to participate.

Authorized and trained employees would be allowed to carry concealed weapons at certain interscholastic events in which students from the district were participating.

The bill would limit liability for DPS, ALERRT, school districts, and charter schools for damages arising from an act or failure to act by an employee who had received the training.

Records of those attending the safety training program would be kept confidential.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 17 is prompted by the changed landscape of school safety after the terrible events of December 12, 2012, when a shooter killed 20 students and six adults at Sandy Hook Elementary School in Connecticut. The bill would allow schools that do not have full-time security personnel to designate employees with concealed handgun licenses to undergo special training so they could respond to a school shooting situation.

The program would be voluntary and provided at no cost to the districts. It would be an option for districts that cannot afford to place commissioned peace officers on all their campuses. It could particularly help elementary schools, which are the least likely to employ security personnel.

Many Texas schools are located miles away from local police. SB 17 would allow trained employees to defend students in a shooting situation until police arrived.

The training would be developed by law enforcement personnel with expertise in training for rapid response situations. DPS officials testified that a 16-hour course would be sufficient to teach educators how to conceal and defend students and what to do once police arrive.

The bill would not create a new avenue for guns to be allowed in schools

because school boards currently may, through written authorization, allow teachers and other employees to carry concealed weapons on school campuses. Those districts that choose to allow trained employees to carry concealed weapons would be protected from liability under provisions in SB 17.

The bill would limit state funds to $1 million per biennium and require any additional funds needed to complete the program come from grants and donations. The Legislative Budget Board (LBB) fiscal note of $9.38 million to fully implement the program is based on an assumption that all 8,528 schools would send two employees to the training. Some of the schools would not be allowed the free training because they employ full-time security personnel and others likely would choose not to participate.

OPPONENTS SAY:

SB 17 would allow school districts to pretend to be addressing school safety instead of truly providing the resources needed to make schools safer.

Only fully certified law enforcement personnel should be dealing with weapons on campus. One teacher's group said that 65 percent of the 2,000 teachers who responded to an online survey agreed that security should be provided by local law enforcement and school security, rather than teachers and other school personnel.

Sixteen hours of training is not sufficient and far less than law enforcement officers receive. It is unwise to send insufficiently trained educators into danger.

As has been shown in previous cases, confrontations with active shooters are challenging even for fully trained law enforcement officers. More guns in schools outside the hands of true law enforcement officers would invite more accidents.

The LBB fiscal note is based on an eight-hour curriculum to supplement the CHL training program. Even at that level, it estimates $9.38 million would be needed to hire DPS troopers who would be the firearms instructors for the training program and for staffing, equipment, and technology costs associated with the training.

NOTES:

The fiscal note estimates the full cost of the safety training program at $9.38 million and assumes that costs in excess of $1 million per biennium

would be covered with gifts, grants, and donations. The costs are based on an assumption that all 8,528 public schools would send two employees to the training.

The LBB assumes that DPS would develop an eight-hour course using DPS firearm instructions to supplement the CHL training program and would process applications from qualified individuals and maintain training records. The fiscal note estimates that DPS would need to train up to 18 new troopers in its recruit schools and add other training, license, and program specialists. Additional costs would be for training materials and technology.

SUBJECT: Relating to college readiness and success

COMMITTEE: Public Education — favorable, without amendment

VOTE: 10 ayes — Aycock, Allen, J. Davis, Deshotel, Farney, Huberty, K. King, Ratliff, Rodriguez, Villarreal

0 nays

1 absent — Dutton

SENATE VOTE: On final passage, April 25 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify:* Melody Chatelle, United Ways of Texas; Casey McCreary, Texas Association of School Administrators; Julie Shields, Texas Association of School Boards)

Against — None

On — (*Registered, but did not testify:* David Anderson, Texas Education Agency)

BACKGROUND: STEM refers to studies in the fields of science, technology, engineering, or mathematics. Education Code, sec. 61.0517, defines "applied STEM course" as an applied science, technology, engineering, or mathematics course offered as part of a school district's career and technology education curriculum and approved by the State Board of Education (SBOE) for purposes of satisfying the mathematics and science curriculum requirements for the recommended high school program.

Education Code, sec. 61.0761, establishes the P-16 College Readiness and Success Strategic Action Plan. The P-16 Council recommends to the commissioner of education and the Texas Higher Education Coordinating Board a college readiness and success strategic action plan to increase student success and decrease the number of students enrolling in developmental course work in institutions of higher education. The plan includes:

- definitions of the standards and expectations for college readiness;
- a description of the components of a P-16 individualized graduation plan sufficient to prepare students for college success;
- the manner in which the Texas Education Agency (TEA) should provide model curricula; and
- recommendations on teacher certification.

The commissioner of education and the coordinating board adopt the college readiness plan if they determine that it meets the necessary requirements. The SBOE retains ultimate authority over the P-12 curriculum.

Education Code, sec. 61.833, requires a four-year institution of higher education, such as a university, to forward the transcript of a student who transferred from a community college (or other lower-division institution) to the community college to see if the student is eligible for an associate's degree.

A university sends the transcript with the student's permission once the student has earned a cumulative total of 90 credit hours, 30 of which were earned at the community college. If the student is eligible for an associate's degree, the credits are "reverse transferred" from the university to the community college and the associate's degree awarded by the community college.

DIGEST:

SB 1509 would expand the definition of "applied STEM course," allow the Texas Higher Education Coordinating Board to develop or identify programs that enhance student success, and lower the number of credits needed for a reverse transfer associate's degree from 90 to 66.

Applied STEM courses. SB 1509 would add dual-credit courses — courses offered for both high-school and college credit — to the definition of a course that could qualify as an "applied STEM course." The bill would include college readiness standards to the curriculum requirements satisfied by an applied STEM course.

Identifying programs that enhance student success. SB 1509 would direct the coordinating board to identify higher education bridge programs, professional development programs, and other programs that support the state's "Closing the Gaps" strategy to increase participation and success in higher education. The bill would direct the commissioner of higher

education or the commissioner's designee to determine qualifications and requirements for student participation and institutional or public school eligibility for the "Closing the Gaps" programs.

Lowering the number of credits for a reverse transfer associate's degree. The bill would decrease from 90 to 66 the required cumulative number of credit hours a student must have completed before the university forwarded the student's transcript to the student's community college.

Repealer and effective date. SB 1509 would repeal Education Code, sec. 61.0761(d), which currently requires the commissioner of education and the coordinating board to jointly submit to state leaders prior to each regular session of the Legislature a progress report on the implementation of the P-16 College Readiness and Success Strategic Action Plan.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY:

SB 1509 would make a number of changes to the state's approach to improving college success.

Applied STEM courses. SB 1509 would allow dual-credit programs to count as applied STEM courses. These courses always should have been eligible, and the bill would fix an oversight by including them.

The bill also would allow applied STEM courses to count toward college readiness standards and curriculum requirements. The SBOE has approved college readiness standards as part of the state's public education curriculum (Texas Essential Knowledge and Skills) for mathematics and science. Applied STEM courses are a natural fit and would strengthen these existing standards.

Identifying programs that enhance student success. The bill also would allow the coordinating board to identify programs that contribute to college success rather than requiring the board to develop them.

Lowering the number of credits for a reverse transfer associate's degree. SB 1509 would increase the number of associate's degrees awarded in Texas. Because not all transfer students complete a bachelor's degree, it is vital that those who have met the requirements of an associate's degree be awarded that credential to make them more

competitive in the job market.

While current law requires universities to forward a transfer student's transcript to the student's community college once the student has earned 90 credits, this is an unnecessary delay. Most associate's degrees in Texas require 60 credit hours. Lowering the requirement from 90 to 66 would mean the transcript was forwarded shortly after the student likely had earned enough credit to qualify for an associate's degree.

The current requirement of 90 hours is too high. A transfer student who did not reach 90 hours might never request that a transcript be sent to the original community college, not knowing that he or she qualified for an associate's degree.

SB 1509 would not significantly increase the reporting requirements of universities. Current law already requires universities to send a transfer student's transcript to the student's community college when certain conditions are met. SB 1509 only would require universities to forward a student's transcript an earlier stage of a student's academic career. The increase in associate's degrees would benefit individual students and the state's economy enough to outweigh any possible burden.

OPPONENTS SAY:

The number of credit hours required before a university sends a transfer student's transcript to the student's community college should not be lowered from 90 to 66, as SB 1509 would do, because a student has a better chance of actually having completed an associate's degree with 90 credit hours than with 66 credit hours. To earn an associate's degree, a student must have completed the core requirements of the degree, and 66 hours could include remedial classes or other credits that do not qualify as part of a degree program. This often happens if, for any reason, students do not take their classes in the correct sequence.

SB 1509 would impose another unfunded state mandate upon institutions of higher learning. With the trigger lowered to 66 hours from 90 hours, universities would have to send more transcripts to community colleges. While this might not be a large increase in a university's work load, SB 1509 still would require universities to perform another activity outside of their core function of teaching and research.

OTHER OPPONENTS

Rather than having a student's transcript sent to a community college sooner, as SB 1509 would do, it would be better to require universities to

SAY: send the transcript more often. This would increase the likelihood that the student's earned associate's degree would be detected and awarded by the community college. Current law does not require the transcript to be sent more than once.

SUBJECT: Low-level radioactive waste disposal oversight, creation of new account

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Harless, Isaac, Kacal, Lewis, Thompson, C. Turner, Villalba

1 nays — Reynolds

1 absent — Márquez

SENATE VOTE: On final passage, April 23 — 24-7 (Davis, Duncan, Garcia, Huffman, Lucio, Rodriguez, Watson)

WITNESSES: *(On House companion bill, HB 1653:)*
For — Richard Dolgener, Andrews County; Bill Lindquist, Waste Control Specialists, LLC; (*Registered, but did not testify*: Stephen Minick, Texas Association of Business)

Against — Karen Hadden, SEED Coalition; Marion Mlotok, Activate Austin; Marisa Perales, Lowerre Frederick Perales Allmon & Rockwell; Kaiba White, Public Citizen; (*Registered, but did not testify*: Matthew Haertner, Public Citizen; Casey Kelley, Exelon Corp.; Clay McKelvy, Public Citizen; Melanie Oldham; Scheleen Walker, Sierra Club Lone Star Chapter; David Weinberg, Texas League of Conservation Voters)

On — (*Registered, but did not testify*: Victor Alcorta, Studsvik; Charles Maguire, Texas Commission on Environmental Quality; Richard Ratliff, Texas Department of State Health Services; Barbara Taylor, Department of State Health Services; Robert Wilson, Texas Low Level Radioactive Waste Disposal Compact Commission)

BACKGROUND: A three-state compact to dispose of low-level radioactive waste from Texas, Maine, and Vermont in Texas was approved by Congress in 1998, although Maine later withdrew after decommissioning its nuclear facility. Texas is the host state for the Texas Low-Level Radioactive Waste Disposal Compact with Vermont. It requires Texas to develop a facility for the disposal of low-level radioactive waste generated within the compact's party states.

In accordance with the compact and in compliance with state law, the Texas Commission on Environmental Quality (TCEQ) issued a license to Waste Control Specialists (WCS) to build and operate a facility for the disposal of low-level radioactive waste for the compact at the company's site in Andrews County. The disposal facility accepted its first shipment in April 2012.

Low-level radioactive waste falls under the jurisdiction of both Texas Department of State Health Service (DHS) and the Texas Commission on Environmental Quality (TCEQ). DHS regulates and licenses the use, transport, and storage of radioactive materials. TCEQ regulates the disposal of low-level radioactive waste and monitors the WCS facility in Andrews County for compliance with permit requirements.

Waste from non-compact parties generally means waste generated by a party located outside Texas or Vermont.

DIGEST:

CSSB 791 would, among other things, change the mix of radioactive substances collected at the state's low-level radioactive waste disposal site, add a new perpetual care account, and increase the caps on the accounts for depositing fees and surcharges. It also would allow the use of fees for training of first responders along routes used for transporting radioactive waste.

CSSB 791 would restructure the current radiation and perpetual care account and create a new account for fees and surcharges collected from the operator of the low-level radioactive disposal facility.

Radiation and perpetual care account. The existing radiation and perpetual care account would be for fees collected by and programs undertaken by DSHS.

Environmental radiation and perpetual care account. The environmental radiation and perpetual care account, a new general revenue account, would be for fees collected by and programs undertaken by the TCEQ.

Money and security in the environmental radiation and perpetual care account would be used by TCEQ for:

- the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment; and
- to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the commission to meet the requirements of this chapter or of commission rules.

The TCEQ could use its contracting authority for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to commission jurisdiction.

Money and security in the environmental radiation and perpetual care account could not be used for the TCEQ's normal operations.

The bill would provide that the existence of the environmental radiation and perpetual care account did not make the commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of commission rules.

The TCEQ could not collect a fee for the environmental radiation and perpetual care account from a uranium or thorium mine until the mine began operations.

Perpetual care account caps. The bill would cap the cumulative amount of fees that could be collected under the two perpetual care accounts at $25 million. The fees would be reinstated when the sum of the balances of the accounts fell to $12.5 million or less. The surcharge would still be collected on waste coming from parties outside the compact regardless of the balances in the two accounts.

The fees charged uranium and thorium licensed mines would be suspended when the amount in the environmental radiation and perpetual care account attributable to those fees reached $2 million. If the amount in that account attributable to those fees was reduced to $1.5 million or less, the fee would be reinstated until it reached $2 million.

The bill would suspend the fee for a state compact party waste generator when the amount in the radiation and perpetual care account attributable to those fees reached $500,000. If the amount in that account attributable to those fees was reduced to $350,000 or less, the fee would be reinstated until the amount reached $500,000.

Non-compact waste. Beginning on September 1, 2015 the compact waste disposal license holder could accept nonparty compact waste for disposal only if the waste had been reduced in volume by a one-third. TCEQ would establish rules to ensure that waste was volume-reduced. Before establishing requirements that a particular waste stream be volume reduced, the TCEQ would first determine that there were at least two unaffiliated U.S. companies that offered volume reduction for each waste stream. Class B and Class C resins would be exempted from the waste-reduction requirement.

The compact waste disposal facility license holder would be prohibited from accepting Class A low-level waste from non-compact states unless the waste had been containerized.

The waste disposal facility license holder could dispose of:

- not more than the greater of 1.167 million curies from states not party to the compact or an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility; and

- not more than 275,000 curies of waste from non-compact states in any fiscal year, compared with the current limit of no more than 50,000 total cubic feet of nonparty waste and no more than 120,000 curies after the first-year limit of 220,000 curies.

Minor amendment. The TCEQ executive director could, through minor amendment, modify the waste form, type, or stream based on a site-specific performance assessment and objectives defined by commission rule.

Capacity study and audits. The TCEQ would be required to perform a capacity study of the disposal facility no later than December 1, 2016.

The TCEQ would perform random audits of shipments to the site to ensure

that volumes, waste contents, and classifications of waste were accurately represented. The TCEQ would report the findings of the audits in its biennial legislative reports.

Contract review. The bill would require TCEQ to establish rules for the review and approval of the commission's executive director of contracts between the compact waste disposal waste facility license holder and third parties. Affected parties could seek judicial review.

First responder training. CSSB 791 would require the Department of State Health Services (DSHS) to use fees collected under existing statute for emergency planning for first responder training along transportation routes designated by the department.

Repeals. The bill would repeal the statute associated with the start-up of the licensed facility, the statute required to conform to the perpetual care accounts and account caps, and a reporting requirement already performed under the provisions of the compact.

Memorandum of understanding. TCEQ would be required to develop rules, as soon as practicable, to implement the bill's provision related to volume reduction of non-compact party waste and permit modification by the executive director. Within one year of the bill's effective date, TCEQ would have to develop rules implementing procedures for reviewing contracts. No later than January 1, 2014, the TCEQ and DSHS would have to update an existing memorandum of understanding between the agencies that governs each agency's role regarding oversight of radioactive materials.

Effective date. The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Future capacity. CSSB 791 would strengthen the existing statute that limits the waste stream that could be disposed at the WCS site to 30 percent of non-compact party waste. The legislation is needed to modify disposal operations at the Texas Low Level Radioactive Waste Compact Facility in Andrews County based on a capacity report performed by TCEQ and the facility's projected future operations.

CSSB 791 would further ensure that 70 percent of the licensed capacity was reserved for low-level radioactive waste for the two compact states — Texas and Vermont. The strengthening of the 70 percent reservation

would guarantee that the facility remained operational until it was needed to decommission Texas' two nuclear power plants at Comanche Peak and Bay City.

Perpetual care. CSSB 791 would provide for two perpetual care funds and a $25 million cap in fees. This would greatly increase the ability of both the DSHS and TCEQ to address the issues associated with low-level radioactive waste transportation, oversight, and decommissioning of the waste disposal facility well into the future. The bill would give each agency its own dedicated perpetual care fund to address the needs of that particular agency.

The bill would shift the majority of the cost for funding the state's perpetual care accounts to non-compact generators shipping waste to Texas. The bill would raise the cumulative perpetual care caps, for both the existing account and a newly created fund for TCEQ activities, to $25 million. Current law provides for different caps, depending on the source of funds (penalties, surcharges, etc.). With the exception of caps related to fines and penalties, the existing caps do not exceed $500,000, and only one of the four caps has reached its $500,000 maximum.

While opponents may say the state’s perpetual care accounts are insufficient, it is unfair to compare Texas low-level disposal site to the sites in other states. Texas' site is a state-of-the-art facility that ensures that waste is buried in a dry environment, below ground, protected in disposal casks and federally approved disposal containers. This is compared to other sites in the country where waste is stored above ground.

License radiation limits. The bill would not alter the total amount of radioactivity at the site, which is established in the TCEQ license and statute.

TCEQ oversight. CSSB 791 would strengthen TCEQ's oversight of the facility, requiring the agency to conduct random audits of waste arriving at the WCS facility, conducted under the authority of TCEQ's internal auditor, to ensure that the wastes were being accurately described as to type and quantity.

TCEQ has hundreds of water wells at the WCS site. Licensing requirements prohibit the disposal of waste when water is discovered, such as after a rain, or if water is present on a shipping container. Groundwater

is occasionally discovered, but these are isolated pockets of water not connected to aquifers.

The WCS site is one of the most monitored waste facilities in the world. TCEQ records regarding the site are available under the state's open records laws. In its rule making, the agency continually considers ongoing public input and will continue to do so well into the future, including in the new rulemaking that would be required by the bill.

First responder training The bill would give the DSHS a mandate and funding to train first responders throughout Texas who may encounter low-level waste in transport.

Increased funding for the state and Andrews County. CSSB 791 would increase the projected revenue coming to the state and Andrews County. In addition to the substantial fees funding the perpetual care accounts, the LBB's fiscal note states that the bill would have $2.2 million positive general fiscal impact through the end of the biennium, and Andrews County would receive an equal amount.

Transportation issues. DSHS adopted the U.S. Department of Transportation rules for the transportation of radioactive material. These rules are restrictive, and transport of radioactive material has the best safety record of any other hazardous materials.

OPPONENTS SAY:

Future capacity. CSSB 791 would ensure future capacity but would do so partially by encouraging the diversion of less radioactive wastes to other states, leaving capacity in Texas for more dangerous radioactive waste. The bill would require TCEQ to perform a capacity review in 2016, but unless the agency pays attention to scientific advice, public comment, and requests for contested case hearings, it is inevitable that the state will conclude that the site can handle additional and more highly radioactive waste.

License radiation limits. The original purpose of Texas entering into a compact with other states was to lower the Texas' exposure to low-level radioactive waste. Instead Texas has perversely changed the goal of the compact to one of making money. The bill would encourage the diversion of Class A waste, the least dangerous and most bulky form of waste, away from the WCS facility to a site in Utah. In addition, the bill would allow for the more radioactive Class B and Class C waste to more rapidly fill the

disposal site. Thus, a site that was originally designed primarily for Class A wastes now would contain largely Class B and Class C wastes, which could continue to be radioactive well beyond the 500-year design of the disposal site.

Perpetual care. The $25 million perpetual care fund limit in CSSB 791 would be significantly smaller and thus largely ineffective over time than the $150 million fund limit provided by the Senate's version of the bill. This would mean that state was ill-prepared for failure at the site or a major transportation accident.

The account caps proposed also would leave the state ill-prepared when it was time to decommission the site. The state runs the real risk that the WCS securities in place for decommissioning of the low-level waste site may have little to no value at the time of decommissioning. The state experienced similar problems with the securities put in place for the decommissioning of uranium mines in the 1970s. When it came time to decommission the sites, the securities were largely worthless. The state needs to be prepared for this and have perpetual care funds large enough to address that contingency.

Despite groundwater pumping to ensure the site is dewatered, water continues to show up on the WCS site. The legislation fails to address the risk of water on the site becoming contaminated, and the perpetual care funds are insufficient to cover the costs of addressing groundwater contamination if it were to occur.

TCEQ oversight. TCEQ has a history of approving WCS requests. The public meeting and comment opportunities provided by minor amendment permit request are poor substitutes for contested case hearings.

Audits of waste streams should be moved out of TCEQ to the state auditor. This would help ensure that audits were not politicized.

Increased funding for the state and Andrews County. Both the state and Andrews County would gain funds in the near term because accelerating rates of waste being disposed would result in increased fees. However, the long-term costs of the site, if there is groundwater contamination or a major accident, could be extraordinarily costly. Experience has shown that clean-up costs have ranged from $750 million to billions of dollars at other U.S. low-level waste facilities that have

leaked.

Transportation issues. It is unclear whether DSHS has designated transportation routes and protocols for low-level radioactive waste. The bill should require the agency to do so.

NOTES:

The Legislative Budget Board's fiscal note details a $1.1 million gain to general revenue per year over the next five fiscal years. Andrews County would see a similar gain. The fiscal note recognizes a probable cost per year of about $415,000 per year from the radiation and perpetual care account for first responder training, a probable gain to the radiation and perpetual care account of about $465,000 per year, and a probable gain to the new environmental radiation perpetual care account, which would be created by the bill, of about $9.3 million per year.

CSSB 791 differs from the Senate version in a number of ways, including:

- lowering the perpetual fund account limit from $150 million to $25 million;
- removing a provision that would have provided that interest earned by the environmental radiation and perpetual care account be credited to the account; and
- providing a different amount of non-compact party waste that can be received in a given year.

SUBJECT: State Board of Education oversight of CSCOPE

COMMITTEE: Public Education — favorable, without amendment

VOTE: 7 ayes — Aycock, J. Davis, Deshotel, Farney, Huberty, K. King, Ratliff

4 nays — Allen, Dutton, J. Rodriguez, Villarreal

SENATE VOTE: On final passage, April 15 — 29-1 (Zaffirini)

WITNESSES: (*Public hearing, April 30:*)
For — Dorothy Dundas; Neal Frey; Barry Haenisch, Texas Association of Community Schools; Bob Hall; Stanley Hartzler; Ann Hettinger, Concerned Women for America; Jonathan Saenz, Texas Values; Peggy Venable, Americans for Prosperity-Texas; (*Registered, but did not testify:* Gary Bennett and Lukas Moffett, Center for the Preservation of American Ideals; MerryLynn Gerstenschlager, Texas Eagle Forum; Dustin Matocha, Texans for Fiscal Responsibility; Kia Mutranowski, Michelle Smith, and Cecilia Wood, Concerned Women for America; Sharon Russell, ICaucus; and 33 individuals)

Against — Katherine Miller, Texas Freedom Network; Randy Willis, Granger ISD; (*Registered, but did not testify:* David D. Anderson, Texas School Alliance; Yannis Banks, Texas NAACP; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Kay Forth, American Civil Liberties Union)

On — Monty Exter, The Association of Texas Professional Educators; (*Registered, but did not testify:* David Anderson, Texas Education Agency; Jerry Maze, ESC 12/CSCOPE; Mike Motheral, Sundown ISD; Terry Smith, Education Service Centers)

BACKGROUND: CSCOPE is an online curriculum management system developed and owned by the Texas Education Service Center Curriculum Collaborative, a consortium of the 20 Education Service Centers (ESC) in the state organized as a 501(c) (3). The CSCOPE system includes a curriculum framework for grades K-12 in all foundational academic subject areas aligned to the Texas Essential Knowledge and Skills (TEKS), the state's

public education curriculum.

Initial CSCOPE development began during the 2005-06 school year, with the 2006-07 school year designated as the first year of implementation. In 2006-07, there were 182 active CSCOPE districts in Texas. As of September 25, 2012, there are 875 active CSCOPE districts. This equates to about 70 percent of districts in Texas and about 35 percent of students.

Education Code, sec. 31.022, requires the State Board of Education (SBOE) to adopt a review-and-adoption cycle for instructional materials for each subject in the required curriculum for elementary grade levels, including prekindergarten, and secondary grade levels.

DIGEST:

SB 1406 would require instructional materials developed by a regional ESC, acting alone or in collaboration with other ESCs, to be subject to the review-and-adoption process for instructional materials outlined in Education Code, sec. 31.022.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1406 would bring much-needed SBOE review of CSCOPE, an online system of lesson plans that was developed by the regional ESCs with no oversight, transparency, or accountability. The bill would not remove CSCOPE from districts that are using it but simply would bring the lesson plans under the same vetting process that the elected SBOE uses for textbooks and instructional materials.

CSCOPE content was developed without parental input. In fact, parents have had to fight to learn the content of CSCOPE because teachers had been required to sign a contract not to disclose the content. This conflicts with Education Code, sec. 26.006, which assures parents the right to review teaching materials, instructional materials, and other teaching aids.

If local districts need online lesson plans, they could use the services of the Texas Virtual School Network or other online curriculum approved by the Texas Education Agency, rather than CSCOPE.

CSCOPE has supplied lesson plans that are flawed, incorrect, and raise concerns about promoting socialist, anti-American, and anti-Christian

values. Some teachers say it limits their flexibility and creativity. CSCOPE is supposed to be customizable by local districts, but some teachers say they are required to use it verbatim.

Another concern is that the ESC collaborative used public funds to develop a product, then turned around and sold it to Texas schools. This means Texans' tax dollars are being spent twice for CSCOPE.

Although CSCOPE officials recently have made a good faith effort to make their work more transparent, the requirement for SBOE review needs to be codified. CSCOPE officials have revised a user agreement to reassure teachers that they may share instructional materials with parents and in late March began a joint review of the social studies materials with the SBOE. However, this bill would ensure the transparency and public hearings provided by the SBOE's review process. In the past, the SBOE process has prevented textbook publishers from removing lessons about religious holidays such as Christmas and Rosh Hashanah and about famous Americans such as Neil Armstrong and General Patton.

CSCOPE should remove itself from supplying lesson plans to school districts and return to its original mission of supplying a management tool for teachers to keep on pace to teach the TEKS as required.

OPPONENTS SAY:

SB 1406 could remove an important tool that helps school districts meet the expectations of ever-changing TEKS, of a more rigorous state testing and accountability system, and of efforts to improve student performance, all while faced with shrinking financial resources.

CSCOPE was developed by teachers and retired teachers to meet the needs of many school districts that cannot afford their own curriculum development staff. One superintendent testified that it would cost his small school district more than $950,000 to develop lesson plans to cover 1,342 TEKS standards for grades 3-11.

The bill would be a gross infringement on local authority. Parents have every right to raise issues about the way lessons are being taught, but those matters should be brought before local school boards and district officials. The bill would establish two classes of school districts, allowing those that can afford to develop their own lesson plans to be free from SBOE review.

An advantage of CSCOPE is that it can be updated every year in response

to feedback from districts. That adaptability would be difficult to achieve under the cumbersome and lengthy SBOE textbook review process. Provisions in Education Code, sec. 31.022 state that the SBOE is not required to review and adopt instructional materials for all grade levels in a single year; they require the SBOE to organize a cycle for reviewing not more than one-quarter of the instructional materials for subjects in the foundation curriculum each biennium.

It is inappropriate to review CSCOPE to see whether it supports or conflicts with specific political ideologies or religious beliefs. Students should receive the tools to evaluate the vast array of information and viewpoints they will encounter in life. Some supporters of SB 1406 have criticized CSCOPE as pro-Islam, but state education standards require students to study the central ideas of the world's major religions. And the SBOE has come under scrutiny in the past for its partisan debates over textbook language on topics such as evolution, environmental regulation, social studies, and sex education.

The SBOE has appointed a committee to review the curriculum, beginning with social studies content. That process should be allowed to work before it is codified.

OTHER OPPONENTS SAY:

SB 1406 would fail to address the fundamental problem of the TEKS. They are far too voluminous and require the sort of framework provided by CSCOPE. For a typical core subject in high school, more than 60 standards must be taught in fewer than 148 days.

The SBOE should be reviewing the TEKS and reducing the massive amount of material that students are expected to learn.

SUBJECT: Providing windstorm insurance to certain previously insured residences.

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Smithee, Eiland, G. Bonnen, Creighton, Morrison, Muñoz, Sheets, Taylor, C. Turner

0 nays

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On companion bill, HB 3007:*)
For — (*Registered, but did not testify*: Lee Loftis, Independent Insurance Agents of Texas; Chelsey Thomas, Texas Association of Realtors)

Against — None

On — Marilyn Hamilton, Texas Department of Insurance; John Polak, Texas Windstorm Insurance Association; (*Registered, but did not testify*: Sam Nelson, Texas Department of Insurance)

BACKGROUND: Initially called the Texas Catastrophe Property Insurance Association, the Texas Windstorm Insurance Association (TWIA) was established in 1971 to protect consumers after companies ceased to write coverage on the Texas coast following Hurricane Celia in 1970. As a provider of last-resort insurance, TWIA provides basic wind and hail coverage to property owners in 14 coastal counties and parts of Harris County when such coverage is excluded from homeowners' and other property policies.

To obtain TWIA coverage, a property owner typically must provide a certificate of building code compliance (called a WPI-8 or, in certain instances, a WPI-12). TWIA maintains three waiver programs — an approval program, a transition program, and an alternative certification program — that allow a residential property owner to gain coverage without a certificate of compliance under certain circumstances.

DIGEST: SB 1702 would amend Insurance Code, sec. 2210.251 to allow windstorm coverage to be obtained or continued under the section, eliminating the

current deadline of September 1, 2009 by which insurance would have to have been obtained for coverage to be continued. It also would provide that a new or renewal policy obtained under that section was subject to a 15 percent surcharge.

The bill would allow TWIA to insure a residential structure constructed, altered, remodeled, enlarged, repaired, or added to on or after June 19, 2009 that was not in compliance with the applicable building codes standards. Such a home would be required to have been insured on or after that date by an in insurer in the private market who canceled or did not renew coverage before September 1, 2013. Also, no construction, alteration, remodeling, enlargement, or repair of or addition to the structure could have been made after cancellation or renewal of that coverage and before submission of the application for coverage to TWIA.

SB 1802 would repeal Insurance Code, sec. 2210.260 "Alternative Eligibility for Coverage."

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1702 would simplify TWIA's complex waiver programs so that residential structures need not have been insured by TWIA as of September 1, 2009 to obtain TWIA insurance. Homeowners along the coast who have maintained private insurance that did not require a building code compliance certificate find it difficult to seek TWIA coverage. In order to obtain TWIA insurance, despite being covered by a private insurer, they are faced with costly structural modifications under the alternative certification program that are expensive and invasive, especially for property owners of limited means.

Many such homeowners have conducted repairs to their homes, which can make it cost-prohibitive and nearly impossible to obtain a building code compliance certificate. For example, one individual had to decide whether to replace a 30-year roof that was installed in 2003, among many other needless activities, such as removing all the brick from the home and replacing it, in order obtain TWIA insurance. The seller was forced to remove the home from the market.

Real estate sales along the coast are suffering because of TWIA's onerous

waiver and certification requirements. SB 1702 would help ensure that situations like the one described above were avoided in the future, allowing real estate, insurance, and mortgage markets on the coast to operate unburdened by TWIA's complex alternative certification requirements.

Many of the homes that could enter TWIA under the provisions in SB 1702 are being dropped by private insurers and have been insured, improved, and maintained for years. These homes represent a low insurance risk, and their owners would pay the 15 percent surcharge the bill would apply to the waiver program. In addition, a building code compliance certificate still would be required for new residential construction.

OPPONENTS SAY:

SB 1702 would increase TWIA's exposure by allowing more homes to obtain TWIA insurance without having the needed certifications.

NOTES:

The companion bill, HB 3007 by D. Bonnen, was left pending in the House Insurance Committee following a public hearing on April 2.

SUBJECT: Search warrants issued in Texas and other states for certain electronic data

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Carter, Burnam, Leach, Moody, Schaefer, Toth

0 nays

1 absent — Hughes

1 present not voting — Canales

SENATE VOTE: On final passage, April 29 — 31-0

WITNESSES: (*On House companion bill, HB 2268:)*
For — Lori Burks, Tarrant County District Attorney's Office; Anne Olson, Texas Baptist Christian Life Commission; (*Registered, but did not testify:* Jessica Anderson, Houston Police Department; David Boatright, National Center for Missing and Exploited Children; Lon Craft, Texas Municipal Police Association; Robert Flores, Texas Association of Mexican-American Chambers of Commerce; Clifford Herberg, Bexar County Criminal District Attorney's Office; Jason Sabo, Children at Risk; Ballard C. Shapleigh, District Attorney 34th Judicial District; Gary Tittle, Dallas Police Department; Ana Yanez Correa, Texas Criminal Justice Coalition)

Against — (*Registered, but did not testify*: Chris Howe)

On — Scott McCollough, Data Foundry; (*Registered, but did not testify:* Andy MacFarlane, Data Foundry)

BACKGROUND: Code of Criminal Procedure, ch. 18 governs search warrants. Art. 18.02 enumerates property, information, and other items for which a search warrant may be issued.

Arts. 18.06 and 18.07 govern the time within which a warrant must be executed. Unless a warrant is issued solely for specimens for DNA analysis, it must be executed within three days.

Art. 18.20 governs detection, interception, and use of wire, oral, or electronic communications. It defines "electronic storage" as:

- a temporary, intermediate storage of a wire or electronic communication that is incidental to the electronic transmission of the communication; or
- storage of a wire or electronic communication by an electronic communications service for purposes of backup protection of the communication.

Art. 18.21, sec. 4, governs the procedures for a peace officer to require disclosure of a stored wire communication or electronic communication, including circumstances in which a warrant is required. Art. 18.21, sec. 4(d) governs requirements for a peace officer to require disclosure of records or other information pertaining to a subscriber or customer of a remote computing service.

DIGEST:

CSHB 2268 would allow search warrants for certain electronic data to be issued in Texas and executed in other states. It would define terms, provide procedures and standards for these search warrants, and allow for state reciprocity of similar warrants issued in other states.

Definitions. The bill would define terms relating to electronic communication and customer data.

The current definition of "electronic storage" would be replaced. Under the bill, "electronic storage" would mean any storage of electronic customer data in a computer, computer network, or computer system, regardless of whether the data were subject to recall, further manipulation, deletion, or transmission and would include any storage of a wire or electronic communication by an electronic communications service or a remote computing service.

"Electronic customer data" would mean data or records acquired by or stored with the provider of an electronic communications service or a remote computing service that contained:

- information revealing the identity of customers of the applicable service;
- information about a customer's use of the applicable service;

- information that identified the recipient or destination of a wire communication or electronic communication sent to or by the customer;
- the content of a wire communication or electronic communication sent to or by the customer; and
- any data stored by or on behalf of the customer with the applicable service provider.

Search warrants for stored customer data or communications. CSHB 2268 would amend the list of items for which a search warrant could be issued under Code of Criminal Procedure, art. 18.21 to add electronic customer data held in electronic storage, including the contents of records and other information related to a wire communication or electronic communication held in electronic storage.

The bill would add Code of Criminal Procedure, art. 18.21, secs. 5A and 5B to govern the issuance of warrants for stored customer data or communications.

Warrants issued in Texas. Sec. 5A would govern warrants for stored customer data or communications issued in Texas.

Under sec. 5A a district judge could issue a search warrant for electronic customer data held in electronic storage. The warrant could be issued regardless of whether the customer data were held at a location in Texas or in another state. The warrant could only be served on an electronic communications provider or a remote computing service provider that was a domestic entity or was doing business in this state under a contract or a terms-of-service agreement with a resident of Texas if any part of that contract or agreement were performed in Texas.

A warrant under sec. 5A would be served when the authorized peace officer delivered the warrant by hand, by fax, or in a manner allowing proof of delivery by U.S. mail or a private delivery service. The warrant would have to be served on a person designated or allowed by law to receive process for the entity.

A warrant under sec. 5A would have to be executed not later than the 11th day after the date of issuance unless the judge issuing the warrant directed a shorter period within the warrant. A warrant under sec. 5A would be considered to have been executed when proper service was completed.

The bill would amend arts. 18.06 and 18.07 to reflect the 11-day time limit for a warrant issued under sec. 5A.

The service provider receiving the warrant would be required to produce all electronic customer data, contents of communications, and other information sought, regardless of where the information was held. Any officer, director, or owner of an entity who was responsible for the failure of the entity to comply with the warrant could be held in contempt of court. Failure of an entity to timely deliver the information sought would not affect the admissibility of that evidence in a criminal proceeding.

An entity upon which a warrant under 5A was served would have until the 15th business day after the date the warrant was served to comply, except that:

- the deadline for a warrant served on the secretary of state as the agent of the entity would be the 30th day after the date the warrant was served; and
- the judge issuing the warrant could indicate an earlier compliance date in certain circumstances where failure to comply by the earlier deadline would cause serious jeopardy to an investigation or create certain risks.

The entity could also request an extension of the period for compliance if extenuating circumstances existed to justify an extension. The district judge would be required to grant an extension if the peace officer who requested the warrant agreed, or the judge found that the need for the extension outweighed the likelihood that it would cause an adverse circumstance.

If the peace officer serving the warrant provided an affidavit form and notified the entity that an executed affidavit was required, the service provider would have to verify the authenticity of the information produced by including an affidavit given by a person qualified to attest to its authenticity. The affidavit would have to state that the information was stored in the course of the provider's regularly conducted business and specify whether it was the regular practice of the provider to store that information.

A motion to quash filed by a service provider would need to be heard and decided by the judge issuing the warrant not later than the fifth business

day after the date the motion was filed. This hearing could be conducted by teleconference.

Uniformity within ch. 18. The bill would ensure that references to warrants affected by the bill were updated and that sec. 5A mirrored several of the major provisions for search warrants throughout Code of Criminal Procedure, ch. 18.

The sworn affidavit required under art. 18.01(b) would be required for a warrant issued under sec. 5A and would need to establish probable cause that a specific offense had been committed and that the electronic customer data sought:

- constituted evidence of that offense or evidence that a particular person committed that offense; and
- was held in electronic storage by the service provider on which the warrant was served.

Other provisions similar to those elsewhere in ch. 18 would include:

- that an application for a warrant made under sec. 5A would have to demonstrate probable cause;
- that only the electronic customer data described in the sworn affidavit could be seized under the warrant;
- that the sworn affidavit could be sealed pursuant to art. 18.011;
- that a peace officer would need to file a return of the warrant and a copy of the inventory pursuant to art. 18.10; and
- that the warrant would run in the name of "The State of Texas"

The bill would specify that warrants required under Art. 18.21, sec. 4, would be warrants under sec. 5A. It would amend Art. 18.21, sec. 4(d) to apply to a provider of an electronic communications service or a remote computing service and only to disclosure of electronic customer data and not information pertaining to a subscriber.

Reciprocity. Under sec. 5B, a domestic entity that provided electronic communications services or remote computing services would be required to comply with a warrant issued in another state in a manner equivalent to the requirements under sec. 5A.

This bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2268 would simplify a needlessly complex process and keep Texas law enforcement in charge of Texas prosecutions. Currently, if an officer needs a search warrant for electronic data from a California company for someone in Texas, the officer has to create an affidavit and submit it to a California peace officer. The California peace officer must then create another affidavit and submit it to a California judge who will have discretion over whether to issue a search warrant. If the warrant is issued, California law enforcement must execute the warrant, collect the requested information, and then return it to Texas law enforcement. This process could be simplified by allowing Texas judges and law enforcement to issue and execute warrants for certain electronic information held in other states. The entities upon which these warrants are commonly served have processes in place to streamline compliance and production of evidence. CSHB 2268 would expedite the investigation of Texas crimes and give Texas prosecutors the tools they need to successfully and timely prosecute these crimes, while alleviating the burden on courts in other states and simplifying the process for the entities receiving these warrants.

The bill would allow Texas law enforcement to successfully investigate and prosecute criminals who engage in heinous crimes such as human trafficking and child sex exploitation. The Internet is the primary venue for traffickers to buy and sell women and children in the United States. The bulk of criminal activity and evidence in these crimes takes place online, and the evidence may be held on a server or by a company housed in another state. It is often difficult in these cases to gather sufficient evidence because of the complex search warrant procedures, and some cases have to go forward without corroborating evidence because the evidence cannot be obtained in a timely manner. The bill would streamline these search warrants, allowing the state to be more successful in investigating and punishing trafficking crimes.

The bill would allow reciprocity only to the extent necessary for the bill to be effective. In order for Texas judges and law enforcement to use the tools provided by this bill, it would be necessary to grant the same ability to judges and law enforcement in other states who encounter the same problem. The reciprocity in the bill would be narrowly granted to apply only to warrants equivalent to those defined under the bill.

OPPONENTS SAY:

CSHB 2268 would allow judges who should have no jurisdiction in Texas to exercise judicial power within the state. The bill would allow for state reciprocity of warrants, meaning that Texas entities would be required to comply with warrants issued in another state. The judges whose warrants would be honored under this bill were not elected by Texans and should not have jurisdiction to issue warrants and enforce compliance within the state.

NOTES:

Unlike the Senate-engrossed version, the committee substitute specifies the time in which a warrant would have to be executed and adds provisions that would allow the party responding to a warrant to request an extension.

The companion bill, HB 2268 by Frullo, passed the House by a vote of 129-0-3 on May 7. It was reported favorably as substituted by the Senate Committee on Criminal Justice on May 16 and recommended for the Local and Uncontested Calendar. The HRO analysis of HB 2268 appears in the May 4 *Daily Floor Report*, Number 66, Part Two.

SUBJECT: Allowing physicians and therapeutic optometrists to dispense some drugs

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes —Naishtat, Collier, Cortez, S. Davis, Guerra, Laubenberg, Zedler

2 nays — S. King, J.D. Sheffield

1 present not voting — Kolkhorst

1 absent — Coleman

SENATE VOTE: On final passage, March 12 — 29- 2 (Campbell, Schwertner)

WITNESSES: For — Laura Hunter, Obagi; (*Registered, but did not testify*: Bj Avery, Texas Optometric Association; Dan Finch, Texas Medical Association; James Gray, American Cancer Society Action Network; Justin Henderson, Texas Optometric Association; Lisa Hughes, Texas Dermatological Society; Tom Kowalski, Texas Healthcare and Bioscience Institute; Tommy Lucas, Texas Optometric Association; Greg Nikolaidis; Rocco Piazza, Rocco C. Piazza, MD, PLLC)

Against — (*Registered, but did not testify*: Robert Culley, Generic Pharmaceutical Association; Joe DalSilva, Texas Pharmacy Association; John Heal, Texas TrueCare Pharmacies; Cheri Huddleston, Alliance of Independent Pharmacies)

On — Kerstin Arnold, Texas State Board of Pharmacy; Mari Robinson, Texas Medical Board and Texas Physician Assistant Board

BACKGROUND: Occupations Code, ch. 558, requires that a person obtain a license in order to practice pharmacy in Texas.

DIGEST: CSSB 227 would allow physicians and therapeutic optometrists to dispense to their patients prescription drugs designed to enhance the individual's appearance, also known as aesthetic pharmaceuticals. These drugs would consist of bimatoprost, hydroquinone, and tretinoin.

A physician or therapeutic optometrist could dispense to a patient an aesthetic pharmaceutical in an amount greater than the patient's immediate need, but a therapeutic optometrist could not dispense a drug that was not within the person's scope of practice. Physicians or therapeutic optometrists could charge a fee for the drug. They would also have to inform the patient that the prescription could be filled at a pharmacy (if available there) or dispensed at their office.

The pharmaceuticals would have to meet state and federal labeling and record-keeping standards. To the extent required by law, the records would have to be accessible. The Texas State Board of Pharmacy would have to work with the Texas Medical Board and the Texas Optometry Board to develop rules governing the packaging, labeling, and dispensing of aesthetic pharmaceuticals. The Texas Medical Board and the Texas Optometry Board would have to adopt reasonable fees necessary to implement the bill but could not exceed a similar fee paid by pharmacists. These boards would adopt rules to implement the bill by March 1, 2014.

The bill would define aesthetic pharmaceutical, physician, and therapeutic optometrist. It would make conforming amendments to laws regulating the dispensation of dangerous drugs.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. The provisions authorizing dispensation and mandating compliance with recordkeeping and labeling laws would take effect March 1, 2014.

SUPPORTERS SAY:

CSSB 227 would enhance patient choice and could lower the cost of certain medications. These types of medications are typically prescribed to treat skin pigmentation conditions or promote eyelash growth. By allowing doctors (and therapeutic optometrists) to dispense certain drugs from their offices, this bill could eliminate unnecessary travel and reduce treatment delays. It would also generate a healthy amount of competition, which could help lower prices.

This bill would improve patient safety because these medications are safer and more effective when administered and supervised by a doctor. CSSB 227 would allow patients to easily obtain their doctor's advice and enable the doctor to quickly make modifications to the patient's treatment

regimen. Moreover, the bill is limited to a very select list of innocuous, topical medications that carry little risk of adverse reactions. Although these medications do have some non-cosmetic uses, they are rarely prescribed for the treatment of more serious conditions. And even when they are prescribed for non-cosmetic conditions, they are still safe medications with few side effects.

OPPONENTS SAY:

CSSB 227 could compromise patient safety and circumvent established dispensation procedures. Pharmacies are regulated to ensure they meet high standards for temperature and inventory quality, but there is no similar regulation of doctor's offices. Further, while pharmacists have many years of training to learn about medications and recognize potential adverse reactions, doctors only have one semester of pharmacology during medical school. There is also the possibility that doctors would use these medications for non-cosmetic purposes, such as glaucoma treatment. These uses increase the risk of an adverse reaction and should be closely monitored by a pharmacist.

This bill would set a bad precedent by allowing doctors to dispense certain types of drugs. Although the bill would be limited to three compounds, this could be a slippery slope toward the inclusion of many other medications.

SUBJECT: Requiring provider approval to transfer Medicaid fee schedules

COMMITTEE: Insurance — favorable, without amendment

VOTE: 6 ayes — Smithee, G. Bonnen, Morrison, Muñoz, Sheets, Taylor

0 nays

3 absent — Eiland, Creighton, C. Turner

SENATE VOTE: On final passage, April 25 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — Patricia Kolodzey, Texas Medical Association; Pati McCandless, Blue Cross & Blue Shield of Texas; (*Registered, but did not testify:* BJ Avery, Texas Optometric Association; Charles Bailey, Texas Hospital Association; Jennifer Cawley, Texas Association of Life and Health Insurers)

Against — None

On — (*Registered, but did not testify:* Doug Danzeiser, Texas Department of Insurance)

DIGEST: SB 1221 would prohibit an insurance company, health maintenance organization (HMO), or preferred provider organization (PPO) in the Medicaid or children's health insurance program (CHIP) from requiring that a contracted provider allow access to or transfer their name and discounted fee to other HMO and PPO benefit plans.

The bill would allow such transfers only if the provider signed on a separate signature line near a written notice from the insurance company, HMO, or PPO that included in conspicuous, boldface type a statement similar to the following: “By signing on this line, you may be agreeing to apply this company's Medicaid or CHIP fee schedule to services you provide to commercial insurance or HMO enrollees.”

SB 1221 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2013 and would apply only to contracts entered into or renewed on or after that date.

SUBJECT: Drug testing as a condition of unemployment benefits

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 5 ayes — J. Davis, Bell, Isaac, Murphy, Workman

4 nays — Vo, Y. Davis, Perez, E. Rodriguez

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: (*On House companion bill, HB 1281:*)
For — Bill Hammond, Texas Association of Business; (*Registered, but did not testify*: Kathy Barber, NFIB Texas; Brent Connett, Texas Conservative Coalition; Trish Conradt, Coalition for Nurses in Advanced Practice; Cathy Dewitt, Texas Association of Business; Jon Fisher, Associated Builders and Contractors of Texas; Stephanie Gibson, Texas Retailers Association; Scott Stewart, Zachry Industrial; Kurtiss Summers, NFIB Texas; Kathy Williams, Texas Association of Staffing)

Against — Leslie Helmcamp, Center for Public Policy Priorities; Rick Levy, Texas AFL-CIO; (*Registered, but did not testify*: Michael Cunningham, Texas State Building and Construction Trades Council; Cornelius English, Jr., United Transportation Union; Currie Hallford, CWA; Ted Melina Raab, Texas American Federation of Teachers; Kamron Saunders, United Transportation Union; Dee Simpson, AFSCME; Matt Simpson, ACLU of Texas)

On — Larry Temple, Texas Workforce Commission

BACKGROUND: The Unemployment Compensation Act (Labor Code, ch. 201) stipulates that an individual is entitled to unemployment benefits based upon wages actually received during the individual's base period of employment. Labor Code, ch. 207, subch. B specifies when an individual is eligible to receive unemployment benefits for a base period.

The Texas Controlled Substances Act (Health and Safety Code, ch. 481) defines the types of drugs regulated in Texas and sets forth the limitations

on their use.

DIGEST:

CSSB 21 would amend Labor Code, ch. 207 to require the Texas Workforce Commission (TWC) to adopt a drug-screening and testing program for certain applicants for unemployment benefits. An individual, seeking work in an occupation that required preemployment drug testing, in submitting an initial claim for unemployment benefits, would have to submit to a drug-screening assessment adopted by the TWC.

The drug-screening test would have to consist of a written questionnaire designed to determine the reasonable likelihood that an individual was using a substance regulated by the Texas Controlled Substances Act. If a reasonable likelihood of drug use was found, the applicant would have to pass a drug test to be eligible for unemployment benefits.

Prompt notice would have to be mailed to an individual who failed a drug test with information on how he or she could appeal and retake the failed drug test. After four weeks, an individual who failed drug test could reapply for unemployment benefits and take another drug test.

The bill would provide exceptions in which unemployment benefits could not be denied: An individual undergoing or who promptly began drug treatment after receiving the initial notice of the failed drug test could not be denied benefits, nor could someone who failed a drug test because the person used a substance prescribed by a doctor for medical reasons.

The program would have to comply with certain federal requirements for drug testing. TWC, in designing the program, would have to protect the rights of unemployment benefit applicants and recipients.

The bill would take effect on September 1, 2013. The bill would only apply to claims for unemployment benefits filed with TWC on or after February 1, 2014.

SUPPORTERS SAY:

With this bill, the state would take an important step in ensuring recipients of unemployment benefits were drug-free, on a path to self-sufficiency, and ready to work. Under current law, the fact that someone can fail a drug test and still receive unemployment benefits sends the wrong statement.

Drug screening and testing for those applying for unemployment benefits

would only apply to individuals seeking employment within professions that already require drug testing, such as aviation, trucking and logistics. Those unable to pass a drug test to enter a profession where drug screening is already required are unfit to work and should not receive unemployment benefits without receiving treatment. Under the bill, these individuals would be permitted to reapply for unemployment benefits after four weeks.

According to the National Conference of State Legislatures, seven other states have passed similar measures. The bill would be narrowly tailored, consistent with those laws in other states that have cleared benchmarks in the courts. Courts have only had issues with broadly worded laws, such as the one in Florida applying to all public welfare recipients.

Exemptions within the bill and the ability to reapply would protect those who need help the most, while at the same time protecting the interests of taxpayers. With the ability for applicants who failed a drug test to attend drug treatment and reapply for unemployment benefits, the bill would provide a way for these individuals to receive rehabilitation.

Even if statistics do not point to drug use among those in need of government assistance, a significant amount of drug abuse exists within our society in general. The bill would provide a way of combating this problem on a some small level. The business community as a whole has expressed support for this bill.

Concerns about a lack of drug treatment programs are unfounded. A number of community, family, and church treatment programs exist to treat individuals who fail a drug test. Unlike alternative policy approaches that risk providing unemployment benefits to those who later fail an employment drug test, the bill would provide a way to address this issue up front.

OPPONENTS SAY:

The proposal to drug-test Texans who have lost their jobs through no fault of their own would add insult to injury. By definition, Texans are ineligible for unemployment benefits if they have lost their jobs because of illegal drug use or any other bad behavior that causes termination. Requiring people to prove to the state that they were drug-free would not be a fair constraint.

The bill is in search of a problem that does not exist. There is no trend of

increased drug use among those on unemployment. Data are also lacking to suggest people in need of government assistance are more likely to be drug users.

In addition, only a small subset of employers would be subject to the bill's requirements. Everyone else would have to subsidize this program for these few employers. The state does not need to take on this expense. Moreover, people with drug problems who receive unemployment benefits typically do not have the money to gain access to treatment programs.

The bill should adopt an alternative approach. If a drug test was required for a position, and a person failed the drug test, at that point it would be acceptable to cut off that person's unemployment benefits.

NOTES:

The committee substitute differs from the Senate-passed version by removing the requirement for the Texas Workforce Commission to pay the costs of the retaking of a failed drug test claimed to have resulted from a false positive result. The substitute also makes changes to the wording in the Senate-passed version to comply with federal laws and regulations.

The companion bill, HB 1281 by Creighton, was left pending in the House Economic and Small Business Development Committee on April 10.

SUBJECT: Property tax exemption for surviving spouses of certain service members

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Martinez Fischer

0 nays

2 absent — Ritter, Strama

SENATE VOTE: On final passage, May 1 — 31-0

WITNESSES: (*On companion bill, HB 548)*
For — Malia Fry; *(Registered, but did not testify:* Donald Dorsey, Texas Association of Vietnam veterans; Robert Flores, American GI Forum of Texas; Cheryl Johnson, Galveston County Tax Office; Lee Johnson, Texas Council of Community Centers; Elizabeth Lewis; Morgan Little, Texas Coalition of Veterans Organizations; John A Miterko, Texas Coalition of Veteran Organizations; Stefanie Pelkey; Sheryl Swift, Galveston County Tax Office)

Against — None

BACKGROUND: Under Texas Constitution, Art. 8, sec. 1(a) the taxation of property must be equal and uniform. Under Art. 8, sec. 20, property generally is taxed at its market value. Art. 8, sec. 1(b) requires that property tax exemptions be authorized by the Constitution.

DIGEST: SB 163 would provide an exemption to the surviving spouse of a member of the U.S. armed services who was killed in action for the total appraised value of the surviving spouse's residence homestead, if:

- the surviving spouse had not remarried since the death of the member of the armed services; and
- the property was the residence homestead of the member of the armed services at the time of death.

The bill would allow the exemption to follow the surviving spouse to a new homestead. It would be limited to the dollar amount of the exemption in the prior qualifying homestead. The exemption would end if the surviving spouse remarried.

SB 163 would take effect January 1, 2014, contingent on voter approval of the constitutional amendment proposed by SJR 16, authorizing the Legislature to provide for a property tax exemption from of all or part of the market value of the residence homestead of the surviving spouse of a member of the armed services who was killed in action. It would apply only to taxes imposed for tax years beginning on or after that date. If voters did not approve SJR 16 or similar legislation, SB 163 would have no effect.

SUPPORTERS SAY:

SB 163, in conjunction with voter approval of SJR 16, would allow a total property tax exemption for spouses of active duty service members who were killed in action. During the past several years, Texas has been a national leader in honoring the service and sacrifice of veterans and their families — not just with words, but with meaningful assistance.

Four years ago, Texans voted to amend the Constitution to grant veterans who were rated 100 percent disabled a complete property tax exemption. Last session, the voters extended that exemption to a veteran's surviving spouse to protect against sudden spikes in property taxes due. The Legislature should extend this same principle to the surviving spouses of military members killed in action.

SB 163 would provide real assistance to a surviving spouse who, after the awful shock of losing a husband or wife, must suddenly try to prepare for the future. According to the comptroller, the average Texas homeowner pays about $3,170 a year in property taxes. For many taxpayers, these taxes are due in a lump sum. SB 163 would provide real relief to surviving spouses in a time of need.

Under the bill, a surviving spouse would lose the total property tax exemption upon remarriage because the exemption would be designed to help offset the loss of income the service member brought to the marriage. If and when a surviving spouse remarried, the assistance should no longer be needed. SB 163 would not provide an incentive against remarriage that skews marriage rates because the bill only would apply to a small number of surviving spouses.

SB 163 would not be an economic drain on local governments or the state. According to the fiscal note, it would cost the state only $94,000 during fiscal 2014-15.

OPPONENTS SAY:

No one disagrees with granting benefits to the spouses of those who were killed in action, but SB 163 would reduce revenue available to local governments. If the Legislature continues to expand the groups of people who are awarded total property tax exemptions, local governments will need to raise property taxes on the groups that remain to keep taxes from going up.

The loss of the exemption upon remarriage could, for some people, provide an economic incentive against remarriage. A surviving spouse receiving the exemption should not have to choose between personal happiness and economic security in decisions about marrying again.

NOTES:

SB 163 is the enabling legislation for SJR 16 by Van de Putte, which was referred to the Ways and Means Committee on May 8.

According to the fiscal note, the bill would have a negative impact of $94,000 to general revenue related funds in fiscal 2014-15. This would rise to $425,000 in fiscal 2016-17, the first biennium in which the exemption would be in effect for both fiscal years.

SUBJECT: Allowing biologically similar products to be substituted for some drugs

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra S. King, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

1 present, not voting — Laubenberg

SENATE VOTE: On final passage, April 22 — 29–2 (Deuell, Seliger)

WITNESSES: For — Fritz Bittenbender, Biotechnology Industry Organization; Dennis Borel, Coalition of Texans with Disabilities; Kimberly Greco, Amgen; Roxana Rhodes; Louis Tharp, Global Healthy Living Foundation; Allen Todd, Creaky Joints and Global Healthy Living Foundation; (*Registered, but did not testify*: Yvonne Barton, AbbVie; Chase Bearden, Coalition of Texans with Disabilities; Dan Finch, Texas Medical Association; Michael Floyd; Kathy Hutto, AstraZeneca; Matt Johnson, Takeda Pharmaceuticals, USA; Tom Kowalski, Texas Healthcare and Bioscience Institute; Gaspar Laca, GlaxoSmithKline; Anna Lozano; Shari Noonan, Texas Urological Society; Robert Peeler, UCB and Allergan; Bradley Westmoreland, Genentech; Richard White)

Against — Brynna Clark, GPhA; Cheyanne Cook, Boehringer-Ingelheim Pharmaceuticals; Allen Horne, CVS Caremark; Jerry Moore, Teva Pharmaceuticals; (*Registered, but did not testify*: Robert Culley, Generic Pharmaceutical Association; Michael Harrold, Express Scripts; John Heal, Texas TrueCare Pharmacies; Cheri Huddleston, Alliance of Independent Pharmacists; Don Stevens, Novartis; Mark Vane, Gardere Wynne Sewell; Kwame Walker, Boehringer-Ingelheim Pharmaceuticals)

On — Gabriel Hortobagyi, The University of Texas MD Anderson Cancer Center; (*Registered, but did not testify*: Kerstin Arnold, Texas State Board of Pharmacy)

BACKGROUND:

Occupations Code, ch. 562, regulates the prescription and dispensation of drugs that can be substituted for brand-name prescriptions, such as generic drugs.

DIGEST:

SB 190 would allow interchangeable biosimilar biological products to be substituted for brand-name biological products under certain circumstances, with the intent of saving money for consumers.

Substitution authorized. If the price of a generic drug or an interchangeable biosimilar biological product was lower than a patient's copayment, a pharmacist would have to allow the patient the option of paying for the lower-priced alternative. The pharmacist would have to record the name, strength, and manufacturer/ distributor of the biological product.

If a practitioner prescribed a specific brand, the pharmacist would have to dispense that particular drug or biological product and could not provide a substitute product. The Texas Board of Pharmacy would have to require that prescription forms prohibit interchangeable biosimilar biological product from being dispensed if a particular brand was specified. If no particular brand was specified, the pharmacist could dispense an interchangeable biosimilar biological product in place of a biological product.

Notification. The bill would contain a temporary provision expiring on December 31, 2015 requiring a pharmacist to notify the prescribing practitioner within three days if the pharmacist dispensed an interchangeable biosimilar biological product. The notification would have to be in writing and identify the name, strength, and manufacturer/ distributor of the product.

Labeling. Unless otherwise indicated, the prescription label would have to indicate the brand name, or the name, strength, and manufacturer/ distributer, of the biological product. If a different biological product was selected instead of the prescribed product, the label would have to indicate that it was a substitute. Retail and out-of-state pharmacies would have to comply with additional labeling requirements.

Before dispensing an interchangeable biosimilar biological product, the pharmacist would have to notify the patient (or agent) that an

interchangeable product was available and ask the patient or agent to choose between that product and the prescribed brand. This information could be provided on the prescription order form and, in certain circumstances, the pharmacy would not have to notify the patient that a less expensive alternative was available. The pharmacy would have to post a sign informing patients about this notification requirement.

Liability and limitations. A pharmacist who selected an interchangeable biosimilar biological product would assume the same responsibility when filling a prescription for a biological product, and the prescribing practitioner would not be liable for the decision. A pharmacist could select an interchangeable biosimilar biological product only if it was less expensive than the prescribed product, and a pharmacist could not charge a higher fee for dispensing interchangeable products than for the brand-name products. The bill would not apply to certain products, such as injectable medications, unless they were determined to be an interchangeable biosimilar biological product.

The bill would adopt federal definitions of biological product, biosimilar, interchangeable, and reference product. The Texas State Board of Pharmacy would have to adopt rules necessary to implement the bill by March 1, 2014.

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 190 would allow Texas patients to take full advantage of medical innovations, which could save them money on prescriptions. Biological products, and their biosimilar counterparts, represent exciting advances in medicine. Rather than being chemically synthesized, biological products are created by recombining or controlling the genes of living organisms. These products have been effective at treating breast cancer, rheumatoid arthritis, and Crohn's disease, among other conditions. Recently, scientists have started developing interchangeable biosimilar biological products (biosimilars), which are comparable to the generic versions of brand-name drugs and could offer less expensive alternatives to costly medications.

In 2010, the Patient Protection and Affordable Care Act recognized the importance of these new medications and authorized an abbreviated approval pathway for biosimilars, expediting the U.S. Food and Drug Administration's (FDA's) licensing process. Although several types of biosimilars will soon be available, Texas pharmacists need statutory

authorization to dispense these medications to patients. SB 190 would provide this framework by updating state pharmaceutical laws to include biosimilars. This would ensure that Texas patients had access to the newest advances in medicine.

The bill would not create onerous requirements or regulations. By creating a temporary practitioner notification system, SB 190 would strike a proper balance between patient safety and additional administrative burdens.

This bill would not be premature because it is likely that biosimilars will become available before the next legislative session. Several other states, including Florida and Virginia, are preparing for the approval of biosimilars by passing similar laws. SB 190 would be a forward-looking bill designed to keep on the cutting edge of medical technology.

OPPONENTS SAY:

SB 190 would be premature. Currently, there are no biosimilars that have earned FDA approval, and Texas should wait for guidance from that agency. Biosimilars are highly complex, sensitive molecules that are difficult to produce. In order to ensure patient safety, Texas should wait until the FDA has fully researched and vetted these medications before implementing a regulatory framework to make them available to patients.

In addition to being premature, this bill would be an example of "regulatory capture" by improperly advancing the commercial interests of large biopharmaceutical groups.

OTHER OPPONENTS SAY:

The bill would create an unnecessary and burdensome notification system. Pharmacies are a heavily regulated industry and an additional requirement could prompt pharmacies to limit the availability of biosimilars, reducing access to these medications.

SUBJECT: Abolishing the state boot camp program used for probationers

COMMITTEE: Corrections — favorable, without amendment

VOTE: 4 ayes — Parker, White, Riddle, Rose

0 nays

3 absent — Allen, J.D. Sheffield, Toth

SENATE VOTE: On final passage, March 27 — 30-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Government Code, sec. 499.052 requires the Texas Department of Criminal Justice (TDCJ) to establish a state boot camp program for persons sentenced to the program as a part of probation.

Code of Criminal Procedure, art. 42.12, sec. 8 outlines eligibility for the program, as well as procedures that courts must follow when sentencing persons to the boot camp.

TDCJ has a 400-bed boot camp facility for males in Childress and an eight-bed female boot camp facility in Gatesville. In fiscal 2012, the Childress facility received 129 offenders and housed an average of about 30 offenders at any given time. The Gatesville facility at times housed no offenders.

DIGEST: SB 345 would repeal provisions in the Government Code and Code of Criminal Procedure establishing and governing the state boot camp program.

Judges would be prohibited from recommending persons for the boot camp. Persons in the program now could remain only until the court suspended execution of their sentences and reassumed custody of them or TDCJ transferred them to another agency unit.

The bill would take effect September 1, 2013.

SUBJECT: Removing public access to employer information in sex offender database

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Carter, Burnam, Canales, Hughes, Leach, Moody, Schaefer

1 nay — Herrero

1 absent — Toth

SENATE VOTE: On final passage, March 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On companion bill, HB 879*)
For — Clare Fleming, Ventana del Soul; Mary Sue Molnar, Texas Voices; Jon Cordeiro; Frank Ringer; (*Registered, but did not testify:* Travis Leete, Texas Criminal Justice Coalition; Allen Place, Texas Criminal Defense Lawyers Association; Kandice Sanaie, Texas Association of Business; Matt Simpson, American Civil Liberties Union of Texas; and 26 individuals)

Against — Joe Ellis, Freedom of Information Foundation of Texas and Texas Association of Broadcasters; (*Registered, but did not testify:* Kelly Riddle, Freedom of Information Foundation of Texas)

On — Jeanette Moll, Texas Public Policy Foundation; Allison Taylor Office of Violent Sex Offender Management; (*Registered, but did not testify:* Randy Ortega, Department of Public Safety)

BACKGROUND: Code of Criminal Procedure, art. 62.005 requires the Department of Public Safety (DPS) to maintain a computerized central database containing the information required from registered sex offenders. Information in the database is public information available through the DPS website, with certain exceptions, including information regarding the person's:

- Social Security number;
- driver's license number;
- home, work, and cell phone numbers;
- online identifier; and

- information that would identify the victim.

DIGEST:

SB 369 would exclude the name, address, and telephone number of a sex offender's employer from the DPS public information database.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 369 would be a reasonable step that would continue to protect public safety while helping in the rehabilitation of registered sex offenders by removing a barrier for them in getting and keeping jobs.

Currently, the sex offender database available to the public lists the employers of registered sex offenders, which can make it difficult for offenders to get hired. The listing can have a chilling effect on employers, making them reluctant to hire a registered offender if their business could be associated with sex offenders. Employers often fear retaliation, harassment, exposure by the media, and loss of business. Registered offenders report losing jobs because of employers' concerns about having their names and addresses listed on the database.

SB 369 would address this problem by removing employer information from the public sex offender database. This change would return the database to the way it operated before a 2010 open records letter ruling by the attorney general determined that the employer information was public information.

Keeping employer information out of the public portion of the database would help with offenders' successful reentry into society. Offenders who have and maintain jobs are less likely to reoffend, resulting in lower recidivism and increased public safety. When employed, registered offenders can contribute to society by supporting themselves and their families and paying taxes, which reduces the demand on state resources to assist them.

SB 369 would not jeopardize public safety. All other public information in the database would remain public. A coworker still could look up a person by name on the sex offender database to see if the person was registered. Employers still could gain access to sex offender information through criminal background checks and the database. The idea that a member of the public currently can use the database to determine whether an employee of a company making a visit to someone's home is a sex

offender has limited application because the database cannot be searched by employer.

SB 369 would make no change to the information available to law enforcement officials. These authorities still would be able to access a sex offender's employer information through the secure portion of the DPS sex offender database.

The bill would put Texas in line with the operation of sex offender registries in other states. Currently, slightly more than 50 percent of states do not list employment information on their registries.

SB 269 is especially important given concerns about the database becoming overly broad and including too many offenders who are not threats to the community and should not be grouped with sexual predators.

OPPONENTS SAY:

The goal of the public sex offender database is to give all Texans a broad-based tool to protect themselves from dangerous predators. By scaling back access to potentially important information, SB 369 could work against that goal. For example, members of the public could use the employer information to make sure sex offenders were where they said they were during work hours or to check if a worker coming to their home was in the database. This public information should not be restricted.

SUBJECT: Modifying the requirement for scoliosis screenings in grades 6-9

COMMITTEE: Public Education — favorable, without amendment

VOTE: 8 ayes — Aycock, Allen, J. Davis, Farney, Huberty, K. King, Ratliff, J. Rodriguez

0 nays

3 absent — Deshotel, Dutton, Villarreal

SENATE VOTE: On final passage, April 2 — 30-1 (Zaffirini)

WITNESSES: For — Julie Lindley, Texas School Nurses Association; (*Registered, but did not testify:* Ramiro Canales, Texas Association of School Administrators; Julie Shields, Texas Association of School Boards)

Against — (*Registered, but did not testify:* John Gill; Bobby Hillert, Texas Orthopaedic Association; Andrew Kant)

On — (*Registered, but did not testify:* David Anderson, Texas Education Agency; Jann Melton-Kissel, Department of State Health Services)

BACKGROUND: The Legislature in 1985 enacted HB 832 by McKinney, which requires screening for abnormal spinal curvature (scoliosis) for students in grades 6-9 attending public and private schools. A school is required to notify the parents if a child shows any signs of a possible spinal curvature.

DIGEST: SB 504 would require the Department of State Health Services and the Texas Education Agency to require each public school to choose whether to screen students in grades 6-9 for abnormal spinal curvature or to provide the parents, managing conservators, or guardians of students in grades 6-9 with information about abnormal spinal curvature.

The Department of State Health Services would be required by March 1, 2014 to develop and provide information on abnormal spinal curvature.

The chief administrator of a school would have to make information about

abnormal spinal curvature available to the parents, managing conservators, or guardians of students who were exempted from the screening because of religious beliefs.

SB 504 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply beginning with the 2014-15 school year.

SUPPORTERS SAY:

SB 504 would eliminate an unnecessary and unfunded mandate by allowing public schools the option to continue screening for scoliosis or to provide parents of students with information about abnormal spinal curvature.

School trustees know what is best for the students in their communities, and SB 504 would honor their discretion. It also would repeal a decades-old mandate for a screening that is ineffective and is not a requirement in many other states. Such screenings have resulted in a high number of findings of possible abnormal spinal curvature that were proven false with further tests that are costly to families, according to a study published by Studies Health Technology Information. Also, a finding at school of a possible abnormal spinal curvature often fails to prompt parents to follow up with a medical examination, rendering even a positive screening ineffective.

Students who attended schools that chose not to require the screening could still find access to examination. Medicaid requires children from poor families to have an annual examination by a physician, and the state requires a physical examination for any student-athlete. Parents also would be more aware of scoliosis if a school provided them with information about abnormal spinal curvature.

Additionally, the bill would remove from school nurses a mandate that keeps them from their other many duties, and would save schools that do not have a nurse from the expense of hiring a provider to administer the screening.

OPPONENTS SAY:

SB 504 would remove a key screening for scoliosis at public schools that often serves as the only chance to identify in impoverished students an abnormal spinal curvature or other deformity.

Early detection through these screenings for students in grades 6-9 is vital to treating a spinal deformity such as scoliosis. Finding a suggestion of an abnormal spinal curve in a student is the first step in an important process that progresses with a referral to a physician for an extensive examination and possible treatment. Setting a student on this path toward treatment has great value even if it requires a screening of all the students of a school. These screenings are administered by properly trained professionals. Simply providing parents with information about scoliosis would be ineffective because most parents are not trained to give such an examination.

Also, the bill would eliminate for many students without access to health care their only chance to detect scoliosis. These screenings have also been used to detect other deformities, such as a leg-length discrepancy, hip dysplasia, and cervical neck problems, many of which would go undiagnosed if not for the current mandatory screening program.

SUBJECT: Additional requirements for county and municipal budget approval

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 6 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez

0 nays

3 absent — Martinez Fischer, Ritter, Strama

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: No public hearing

BACKGROUND: Current law establishes some basic requirements for counties and municipalities to follow when adopting a budget. Following the final approval of a budget, the county or municipality is required to file it with the respective clerk and, if the entity maintains a website, post it online.

DIGEST: SB 656 would add requirements to budgeting processes of counties and municipalities.

Budget adoption. Under SB 656, counties and municipalities would have to approve a budget through a record vote. An adopted budget would have to include a cover page with:

- a specific statement about whether the budget raised more than, less than, or the same amount of revenue as last year's budget;
- the record vote of each member of the governing body on the budget;
- the property tax rates for the preceding fiscal year, and each municipal tax rate adopted or calculated for the current year; and
- the total amount of bonds and other debt obligations owed by the county or municipality.

The county or municipality would have to ensure that the cover page of the budget was amended to include the required property tax rates if they

were not included when the budget was adopted and filed.

Website. If the county or municipality maintained a website, it would have to post the record vote on the budget for at least one year from adoption.

Effective date. The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 656 would be a simple measure in furtherance of the 83rd Legislature's goal of increasing transparency in government operations. The bill would increase transparency on the local level by requiring each budget approved by a county or municipality to include a cover sheet with some basic facts about the budget: the result of the record vote, a statement of how spending compared with the prior year, tax rates for the current and prior year, and the total amount of bonds and other obligations.

The bill would improve accessibility of information for Texans who have neither the time nor the specialized knowledge required to sift through what are sometimes multi-hundred-page budget documents. Most people just want the basic facts about how their local governments are performing with regard to spending and debt. Making this information accessible and, equally important, readable, would force local governing boards to stand behind and justify their spending decisions to the public they serve. This added accountability would promote good governance on the local level.

OPPONENTS SAY:

SB 656 would micromanage local affairs down to the level of creating requirements what would have to appear on a particular page of a document. This would create an additional administrative burden for counties and municipalities with little value added. The content on the budget sheet would be repeating information available elsewhere and could propagate some misleading information on debt.

OTHER OPPONENTS SAY:

The definition of debt in SB 656 would be problematic because it would not distinguish between tax-supported debt and revenue-supported debt. This is an important distinction made elsewhere in state law. Debt that is secured with a specific revenue stream does not affect taxpayers and should not be included in the cover sheet of the budget.

SUBJECT: Creating a regional emergency communications districts

COMMITTEE: Special Purpose Districts — favorable, without amendment

VOTE: 7 ayes — D. Bonnen, Alvarado, Clardy, Goldman, Krause, Stickland, E. Thompson

0 nays

2 absent — D. Miller, Lucio

SENATE VOTE: On final passage, May 7 — 28-1 (Schwertner)

WITNESSES: *(On House companion bill, HB 1124:)*
For — Charles Brotherton, City of Austin; Cynthia Long, Capital Area Council of Governments (CAPCOG) and Williamson County; (*Registered, but did not testify:* Todd Baxter, Time Warner Cable; Will Conley, COG Hays County; Deece Eckstein, Travis County Commissioners Court; Rod Ellis, Paul Hopingardner, City of Austin; Danny Hobby)

Against — (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition)

On — Betty Voights, Capital Area Council of Governments; (*Registered, but did not testify:* Kelli Merriweather, Commission on State Emergency Communications)

BACKGROUND: Emergency 9-1-1 communications are currently delivered throughout the state by emergency communications districts and by regional planning commissions, both authorized by state law. There are 50 districts operating within 24 regional planning commissions delivering 9-1-1 service.

The Capital Area Council of Governments (CAPCOG), which serves 10 counties including Travis County, is the only regional planning commission without an emergency communications district operating within its territory. As a result, CAPCOG operates a 9-1-1 system solely through a regional planning commission.

All of these 9-1-1 entities must migrate their infrastructure and call-taking equipment to support a digital 9-1-1 system, commonly referred to as NextGeneration 9-1-1 (NG9-1-1). NG9-1-1 offers added capacity and efficiencies as well as demand for expanded digital services, such as texting, video, and automated warning systems.

Financing 9-1-1 systems is achieved in Texas by all citizens paying a service fee on their telephone bills. The districts receive service fees generated by citizens in their service areas directly while the regional planning commissions receive the service fees paid by their citizens after they are collected and appropriated to the Commission on State Emergency Communications.

DIGEST:

SB 628 would amend Health and Safety Code, ch. 772 to authorize the Capital Area Council of Governments (CAPCOG), which serves 10 counties, including Travis County, to create a regional emergency communications district. The district would be governed by the CAPCOG board and would be effective when all of the counties and municipal governing bodies in the region adopted a resolution.

The bill would include standard definitions and procedures typical of emergency communications districts related to:

- the powers and duties of the district and the board;
- the budget and annual report;
- the provision of 9-1-1 services;
- the imposition of emergency service fees;
- issuance and repayment of bonds; and
- the transfer of assets.

The bill also would change the definition of "emergency communication district" to include districts allowed to be created by the provisions of the bill.

SB 628 would take effect September 1, 2013.

SUPPORTERS SAY:

SB 628 would enable the Capital Area Council of Governments (CAPCOG) to implement a much-needed emergency communications district, which also would speed the implementation of NextGeneration 9-1-1 (NG9-1-1). The 9-1-1 entities serving larger metro areas are under

more pressure to implement NG9-1-1 because of the added capacity and efficiencies achieved, as well as demand for expanded digital services such as texting, video, and automated warning systems. Because emergency communication districts have a predictable source of revenue from emergency service fees paid by district residents to support full deployment of NG9-1-1, a regional planning commission that included one or more emergency communications districts within its territory would be more likely to have the necessary digital infrastructure for NG9-1-1.

The regional planning commissions representing the four largest metro areas are working on implementation of NG9-1-1, as are the various districts. However, one of the regional planning commissions representing a large metro area, CAPCOG, which serves 10 counties including Travis County, has no emergency communication districts operating within its territory, which places it at a disadvantage in implementing NG9-1-1. The 9-1-1 service fees that would go to CAPCOG are deposited into a general revenue dedicated fund account and then appropriated from the Commission on State Emergency Communications, rather than being received directly as is the case with the other regional planning commissions. Capturing the fees in a general revenue dedicated account has created an unpredictable revenue source for CAPCOG, which has resulted in fees paid by area citizens being used to certify the budget instead of for their intended purpose. According to the Legislative Budget Board, the 9-1-1 service fees general revenue dedicated account is among those with the highest balances ($164.5 million) counted toward certification of the 2012–13 general appropriations bill.

SB 628 would create a regional emergency communications district to allow CAPCOG, which has implemented the digital infrastructure for NG9-1-1 as a regional planning commission system, to begin operating under Health and Safety Code, ch. 772 with the same governing and financing authority as existing metro districts, such as Bexar, Dallas, Harris, and Tarrant. This would ensure a predictable revenue stream to support network and capital contracts necessary for full deployment of a digital network for emergency communication services.

OPPONENTS SAY:

This bill would create an unnecessary, new layer of bureaucracy by creating a special district that would be duplicative of existing service, because the Commission on State Emergency Communications handles 9-1-1 service for one-third of the population, largely in rural areas. Texans

pay fees to fund the agency, but much of these fees are used for funds consolidation rather than their intended purpose.

Also, special purpose districts do not provide services that could not be provided by local governments. The cities and counties should have the power to gather revenue and provide services. This is, again, an extra layer of bureaucracy that could be especially dangerous because these districts have the ability to issue bonds and there is not much oversight or awareness of how much debt a special purpose district can create.

NOTES:

According to the Legislative Budget Board, SB 628 would result in a net loss of revenue to 9-1-1 Service Fees Account 5050 in fiscal 2014-15 of about $8 million due to the creation of a regional emergency communications district that would remove the need for affected regions to collect fees to participate in the state 9-1-1 system. The loss in fee revenue would be offset to an extent by decreased expenditures from the same fund.

SUBJECT: Establishing a provider protection plan for Medicaid managed care

COMMITTEE: Human Services — favorable, without amendment

VOTE: 7 ayes — Raymond, N. Gonzalez, Fallon, Klick, Rose, Scott Turner, Zerwas

0 nays

2 absent — Naishtat, Sanford

SENATE VOTE: On final passage, May 9 — 30-0

WITNESSES: For — (*Registered, but did not testify:* Leticia Caballero, Texas Health Care Association; Melissa Davis, National Association of Social Workers - Texas Chapter; Jan Friese, Texas Counseling Association; Melissa Gardner, Texans Care for Children; David Gonzales, Texas Association of Health Plans; Rachel Hammon, Texas Association for Home Care and Hospice; John Hawkins, Texas Hospital Association; Israel Rocha, Doctor's Hospital at Renaissance; Michelle Romero, TMA; and 14 individuals)

Against — None

On — (*Registered, but did not testify:* Rudy Villarreal, Health and Human Services Commission)

BACKGROUND: In 1991, during its first called session, the 72nd Legislature enacted HB 7 by Vowell, et al., directing the state to establish Medicaid managed care pilot programs. To incentivize the efficient delivery of health care services in a managed care program, a managed care organization (MCO) is paid a capped amount for each client enrolled, rather than for each service delivered.

The Health and Human Services Commission (HHSC) has gradually expanded Medicaid managed care over the past two decades. In 2011, nearly 79 percent of the state's Medicaid population was enrolled in some form of managed care. However, physicians have become increasingly

less likely to accept Medicaid patients in recent years. In a 2012 survey, for example, only 31 percent of physicians reported they were accepting all new Medicaid patients.

DIGEST:

SB 1150 would establish a "provider protection plan" governing contracts between HHSC and MCOs for the delivery of health care services to Medicaid recipients.

The plan would provide for the prompt and proper payment of Medicaid providers by MCOs. It also would provide for the prompt and accurate settlement of claims by educating providers on the submission of clean claims and appeals, accepting uniform forms through an electronic portal, and establishing standards for claims payments.

The provider protection plan would establish an electronic process, including an Internet portal, for any MCO provider to submit electronic claims, prior authorization requests, claims appeals, clinical data, and other documentation that the MCO requested for prior authorization and claims processing. Providers would be able to obtain electronic remittance advice, explanation of benefits statements, and other standardized reports.

SB 1150 would include a prompt provider credentialing process in the plan. It also would create uniform efficiency standards and requirements for MCOs for the submission and tracking of preauthorization requests for Medicaid services.

The plan would create adequate and clearly defined provider network standards that would ensure choice among providers as much as possible, and that were specific to each provider type, including physicians, general acute-care facilities, and others defined in HHSC's network adequacy standards in effect on January 1, 2013. The bill would provide for the measurement of MCOs' retention rates of significant traditional providers.

The provider protection plan would create a work group to review and make recommendations to HHSC regarding any requirements in the bill that were not feasible to implement immediately, and would make recommendations regarding their fiscal impact and implementation timeline.

If HHSC determined other provisions would ensure efficiency or reduce administrative burdens on Medicaid MCO providers, it would include

those in the plan.

SB 1150 would take effect September 1, 2013. HHSC would implement the provider protection plan no later than September 1, 2014. If it were determined that a federal waiver or authorization was required, the affected agency would request it and could delay implementing the affected provision until it was granted.

SUBJECT: Establishing an employment-first policy for individuals with disabilities

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 8 ayes — J. Davis, Vo, Bell, Y. Davis, Isaac, Perez, E. Rodriguez, Workman

0 nays — None

1 absent — Murphy

SENATE VOTE: On final passage, April 18 — 31-0 on the Local and Uncontested Calendar

WITNESSES: For — Norine Grill, The Arc of Texas; Tanya Lavelle, Easter Seals Central Texas; Ana San Andres; Roger Webb, Texas Council for Developmental Disabilities; Nathan Williams, Texas Advocates (*Registered but did not testify*: Susanne Elrod, Texas Council of Community Centers; Gyl Switzer, Mental Health America of Texas)

Against — None

On — (*Registered but did not testify*: Lynn Blackmore, Department of Aging; Frank Genco, HHSC; Kathryn Sibley, Department of Family and Protective Services)

DIGEST: SB 1226 would direct the Health and Human Services Commission (HHSC), Texas Education Agency (TEA), and Texas Workforce Commission (TWC) to adopt and implement an employment-first policy for working-age disabled people that receive public benefits.

The policy would have to:

- affirm that a disabled individual was able to meet the same employment standards as those without a disability;
- ensure that working-age disabled individuals received relevant employment information, including information about the relationship between the individual's earned income and public

benefits;

- ensure that disabled individuals heard about opportunities for training and education that could be a pathway to employment;
- promote the availability of individualized training to prepare disabled individuals for employment;
- promote partnerships with employers to overcome barriers to employment through technology;
- ensure that public school, vocational service, and community provider staff were trained to help individuals with disabilities achieve employment; and
- ensure that competitive employment, while preferred, was not required for an individual with a disability to receive eligible public benefits.

The executive commissioner of HHSC would establish an interagency employment-first task force, or use an existing committee or task force, to promote competitive employment of individuals with disabilities. The task force would not be compensated, but could be reimbursed for appropriate expenses.

The task force would include at least the following individuals:

- an individual with a disability;
- a family member of an individual with a disability;
- a representative of HHSC;
- a representative of the Department of Assistive and Rehabilitative Services;
- a representative of the Department of State Health Services;
- a representative of the Department of Aging and Disability Services;
- a representative of the Department of Family and Protective Services;
- a representative of the TWC;
- a representative of the TEA;
- an advocate for individuals with disabilities; and
- a representative of a provider of integrated and competitive employment services.

At least one-third of the task force would be individuals with disabilities, and no more than one-third could consist of advocates.

The purpose of the task force would be to:

- design an education and outreach process for working-age individuals with disabilities, their families, involved agencies, and relevant stakeholders to raise the expectations of success for employment among individuals with disabilities;
- develop recommendations for the employment-first policy; and
- prepare and submit a to state leaders and the executive commissioner of HHSC each September 1 immediately preceding each regular legislative session a report containing the task force's findings and recommendations.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1226 would encourage competitive employment among disabled persons and help them to integrate into their communities and become more independent. An employment-first policy could ultimately serve disabled Texans better, increase quality of life, and save money for the state.

There is currently no policy in Texas that promotes competitive employment at a living wage (*i.e.*, the minimum income necessary for a worker to meet basic needs) in the general workforce for all working-age Texans with disabilities. National Core Indicators survey data show that 74 percent of those with intellectual and developmental disabilities do not have a community job, and 47 percent of those without a job would like one.

Persons with disabilities are routinely placed into non-integrated settings instead of community-based employment despite the availability of accommodations. Segregated programs often pay sub-minimum wage and fail to cultivate a person's potential. The costs associated with these programs and the other publicly funded supports needed when a person is not able to reach his or her full potential for independence could be avoided with the implementation of an employment-first policy.

An employment-first policy holds persons with disabilities to the same employment standards, responsibilities, and expectations as any working-

age adult. Employment first is a declaration of both philosophy and policy stating that competitive employment is the first and preferred outcome of publicly funded services for persons with disabilities.

Access to jobs paying a living wage is essential if citizens with disabilities are to avoid lives of poverty, dependence, and isolation.

OPPONENTS SAY:

SB 1226 could end up putting state government in the middle of private companies' hiring decisions and wage determinations and place new compliance requirements on private employers in Texas. Hiring and salary decisions should be the prerogative of company management, not HHSC or another state agency that would set a standard for who was qualified to perform a job and what a company should have to pay them.

SUBJECT: Liability protections, other changes related to spaceflight activities

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 8 ayes — J. Davis, Vo, Bell, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

1 absent — Y. Davis

SENATE VOTE: On final passage, April 25 — 30-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1791:*)
For — Lauren Dreyer, SpaceX; Ken Hampton, Greater Waco Chamber of Commerce; Gilberto Salinas, Brownsville Economic Development Council; Caryn Schenewerk, SpaceX; (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Jason Hilts, Brownsville Economic Development Council; Carlton Schwab, Texas Economic Development Council)

Against — None

On — Brad Parker, TTLA

BACKGROUND: In 2011, the 82nd Legislature passed SB 115, which established limited liability for spaceflight entities. Civil Practices and Remedies Code, ch. 100A, defines a spaceflight entity to include a manufacturer or supplier of components, services, or vehicles used in spaceflight activities licensed by the Federal Aviation Administration (FAA). The definition of spaceflight entity also includes employees, stockholders, and advisors to the entity.

A spaceflight entity is not liable to any person for a spaceflight participant injury if the participant consented to all risk of injury. The consent agreement must be signed by the spaceflight participant.

Under Government Code, sec. 481.0069, the Texas Economic

Development and Tourism Office operates a spaceport trust fund. Among the requirements for spending money from the fund is that a spaceport development corporation have secured at least 90 percent of the funding required for a spaceport project and the spaceport operator have obtained the appropriate FAA license.

Penal Code, sec. 42.01(a)(5), creates a disorderly conduct offense for a person who intentionally or knowingly makes unreasonable noise in a public place.

DIGEST:

CSHB 1791 would amend definitions related to spaceflight activities, limit a spaceflight entity's liability for nuisance claims, amend the informed consent requirements for spaceflight participants, and alter the requirements for spending spaceport trust fund money.

Definitions. The bill would amend the definition of a spaceflight entity under Civil Practice and Remedies Code, ch. 100A to include the owner of the real property, such as a city, that was contracting with the spaceflight entity. Local government entities that hosted spaceflight activities, such as a county, also would be included. The bill would amend other existing definitions and would define additional terms, such as "reentry vehicle."

Limited liability. CSHB 1791 would limit a spaceflight entity's liability for damages resulting from nuisance related to spacecraft testing, launch, reentry, or landing. A person could not seek injunctive relief to stop spaceflight activities. The bill would not prevent breach of contract claims for the use of real property or government actions to enforce valid laws and regulations. The bill also would amend Penal Code, sec. 42.01 to prevent lawfully conducted spaceflight activities from qualifying as an unreasonable noise leading to a disorderly conduct criminal charge.

The spaceflight participant's signed agreement consenting to risk of injury would be binding on the participant and any of his or her heirs, executors, or representatives.

Spaceport trust fund. The bill would amend Government Code, sec. 481.0069 so a spaceport development corporation had to demonstrate the ability to fund at least 75 percent of a project and have applied for or obtained the appropriate license if required by federal law in order for money to be spent from the spaceport trust fund. The bill also would expand the definitions of "spacecraft" and "spaceport" in Local

Government Code, sec. 507, which deals with spaceport development corporations.

The bill would take effect on September 1, 2013, and would apply only to spaceflight activities that occurred on or after that date.

SUPPORTERS SAY:

CSHB 1791 would help recruit the space industry to create a spaceport in Texas, where commercial companies may launch spacecraft with payloads such as satellites, supplies for the International Space Station, and civilian astronauts. Texas is a leading candidate for a Space Exploration Technologies (SpaceX) commercial spaceport that would be located near Brownsville, by Boca Chica Beach.

A commercial spaceport would result in significant economic development for the South Texas region in the form of jobs and tourism. In addition, if the launch site were built, SpaceX could invest in related projects, such as manufacturing its rocket engines in South Texas to shorten transport distance.

The bill would promote the development of the commercial space launch industry and a commercial, orbital launch site in Texas by modernizing the statutory framework for spaceflight activities and by clarifying the limitations on liability for spaceflight entities in Texas. Liability protections would be provided for spaceflight entities undertaking spaceflight activities in accordance with Federal Aviation Administration licenses and permits, where required. These spaceflight entities would be protected from a single person obtaining an injunction to stop what would be an extremely capital-intensive activity to build and operate.

The proposal to build a launch site in South Texas has received overwhelming support from area residents, as well as from local and statewide elected officials. Most believe any negative impacts of the project would be greatly outweighed by the positive benefits to the region and to Texas. Boca Chica Village, which would be most affected by any noise, has a small, mostly transient population. With launches limited to 12 per year, the bill should not have a major impact on the quality of life for nearby residents.

OPPONENTS SAY:

HB 1791 would limit the ability of individuals to file a nuisance claim for damages resulting from certain activities related to space flight. However, the proposed launch site would result in significant noise, especially for

nearby residents in Boca Chica Village. As a matter of policy precedent, allowing commercial space entities to be protected from nuisance liability could make it harder for the Legislature to refuse to do the same for other companies in other industries in the future.

NOTES:

The companion bill, HB 1791 by J. Davis, passed the House on April 30 and was reported favorably by the Senate Committee on Economic Development on May 13and recommended for the local and uncontested calendar. The HRO analysis of HB 1791 appears in the April 29 *Daily Floor Report*, Number 61.

SUBJECT: Standardizing the prior authorization form for prescription drug benefits

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Smithee, Eiland, G. Bonnen, Morrison, Muñoz, Sheets, Taylor, C. Turner

0 nays

1 absent — Creighton

SENATE VOTE: On final passage, May 2 — 31-0

WITNESSES: (*On House companion bill, HB 1032*)
For — Sharon Blancarte, Texas Medical Association; John Gill; Greg Hansch, National Association on Mental Illness; Bobby Hillert, Texas Orthopaedic Association; Vaughn Kinosian, ReCept Pharmacy; John McCormick, Texas Optometric Association; C.M. Schade, Texas Pain Society; (*Registered, but did not testify:* Jay Arnold, American Lung Association; Christine Bryan, Clarity Child Guidance Center; Jaime Capelo, Texas Academy of Physician Assistants, Texas Chapter of the American College of Cardiology, and Texas Urological Society; Tracy Casto; Audra Conwell, Alliance of Independent Pharmacists; Krista Crockett, Texas Pain Society; Lenore Depagter; Kristine Donatello, American Cancer Society Cancer Action Network; Steven Hays; John Heal, PBA Health and Texas TrueCare Pharmacies; Greg Herzog, Texas Society of Gastroenterology and Endoscopy; Michelle Ho, Texas Medical Association; Cheri Huddleston, Injured Workers' Pharmacy; Lisa Huges, Texas Dermatological Society; Lee Johnson, Texas Council of Community Centers; Marshall Kenderdine, Texas Pediatric Society and Texas Academy of Family Physicians; Jean Langendorf, Easter Seals Central Texas; John Lee Sang; Katherine Ligon, Center for Public Policy Priorities; Shannon Lucas, March of Dimes; Pete Martinez, Pharmaceutical Research and Manufacturers of America; David A. Marwitz, Texas Pharmacy Association; Mark Newberry, Tarrytown Pharmacy; Amber Pearce, Pfizer, Inc.; Karen Reagan, Walgreen Company; Laurie Reece, Texas Transplantation Society; Michelle Rodriguez, Tricounty Medical; Robert Rogers; Alberto Santos; Bradford

Shields, Texas Society of Health-System Pharmacists and Texas Federation of Drug Stores; Stephanie Simpson, Texas Association of Manufacturers; Dennis Wiesner, HEB; Eric Woomer, Federation of Texas Psychiatry; Michael Wright, Texas Pharmacy Business Council; Sherif Zaafran, Texas Society of Anesthesiologists)

Against — Cathy Dewitt, Texas Association of Business; David Gonzales, Texas Association of Health Plans; Sam McMurry, Texas Self Insurance Association; David Root; Joe Woods, Property Casualty Insurers Association of America; (*Registered, but did not testify:* Kevin Cooper, American Insurance Association; Lucinda Saxon, American Association of Preferred Provider Association)

On — (*Registered, but did not testify:* Doug Danzeiser, Texas Department of Insurance; Amy Lee, Texas Department of Insurance, Division of Workers' Compensation)

BACKGROUND:

Occupations Code, sec. 551.003, defines “prescription drug” to mean:

- a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;
- a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with a caution statement or another legend that complies with federal law; or
- a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

Insurance companies and pharmacy benefits managers often require prior authorization to dispense prescription drugs that are expensive or that are not on an insurance plan drug formulary.

DIGEST:

SB 644 would require certain health insurance plans to use a single, standard form prescribed by rule of the commissioner of insurance for requesting prior authorization of prescription drug benefits. The Department of Insurance, the health benefit plan issuers, and the agents of health benefit plan issuers would have to make the form available electronically on their websites.

Form development. The commissioner of insurance would have to develop the form with input from the advisory committee on uniform prior

authorization and would have to consider prior authorization forms widely used by the state or the Department of Insurance, forms established by the federal Centers for Medicaid and Medicaid Services, and national standards or draft standards for electronic prior authorization.

Advisory committee on uniform prior authorization. Under the bill, the commissioner of insurance would appoint an uncompensated advisory committee including health care providers, health benefit plan issuers, and a representative from the Health and Human Services Commission to help develop the form. The advisory committee would:

- consult with the commissioner of insurance on rules related to the prior authorization form;
- determine the page length of the standard prior authorization form;
- determine the length of time allowed for a health benefit issuer or its agent to acknowledge receipt of the form;
- determine the acceptable methods for acknowledgement of receipt; and
- set the penalty that would be imposed on the health benefit plan issuer or its agent for failure to acknowledge receipt of the form.

Penalties. Under the bill, a health benefit plan issuer or its agent that managed or administered prescription drug benefits would be subject to penalties established by the commissioner of insurance if they failed to use or accept the standard prior authorization form or failed to acknowledge the receipt of a completed form submitted by a prescribing provider.

Electronic prior authorization requests. Within two years of adoption of national standards for electronic prior authorization of benefits, a health benefit plan issuer or its agent would have to accept electronic prior authorization requests for a prescribing provider who had e-prescribing capability.

Exceptions. The bill would not apply to a health benefit plan that provided coverage:

- only for a specified disease or for another single benefit;
- only for accidental death or dismemberment;
- for a period during which an employee was absent from work because of sickness or injury;
- as a supplement to a liability insurance policy;

- for credit insurance;
- only for dental or vision care;
- only for hospital expenses; or
- only for indemnity for hospital confinement.

The bill also would not apply to:

- Medicare supplemental policies;
- medical payment insurance under a motor vehicle policy; or
- long-term care insurance, including a nursing home fixed indemnity policy, unless the commissioner determined that the policy provided benefit coverage so comprehensive that the policy was a health benefit.

Effective dates. The commissioner of insurance would prescribe the standard prior authorization form by January 1, 2015.

The bill would take effect September 1, 2013, and would apply only to a request for prior authorization of prescription drug benefits made on or after September 1, 2015.

SUPPORTERS SAY:

SB 644 would reduce red tape for health-care providers, cut health-care costs, and improve patient safety and access to care by requiring health insurance plans to use one standard prior authorization form for prescription drug benefits. Currently, Texas health insurance plans require providers to use up to 200 different prior authorization forms, many of which ask for different information. Inconsistency between prior authorization forms increases the risk of denial of a prior authorization request, increases the time providers need to fill out forms, and makes it harder for providers to know which form to use.

Requiring providers to use several different prior authorization forms is unnecessary. Two Texas Medicaid plans each use only one prior authorization form for their prescription drug authorization requests, so it can be done.

The bill would ensure that a provider knew that a health plan had received its request for authorization by requiring health plans to acknowledge receipt of the request within a certain time frame and by penalizing health plans that did not use the standard form or did not acknowledge receipt of the form. The bill would only require health plans to acknowledge that

they had received the form. It would not affect how much time plans had to make a decision about the request.

By establishing a prior authorization form advisory committee, the bill would ensure that all stakeholders, including insurers, providers, HHSC, hospitals, and pharmacies, could decide the length and content of the form, penalties assessed for noncompliance, and the length of time required for acknowledgement of receipt of the form. Under the bill, providers could add an addendum to the form as needed.

OPPONENTS SAY:

By requiring a certain length for all prior authorization forms, the bill might require providers to either provide more information or less than was needed for a certain request. The bill might be burdensome for primary care providers who typically do not need to fill out more than one page or for specialists who might need more room than the form would allow.

SUBJECT: Discontinuing TDLR's review of loss damage waivers

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Workman

1 nay — Walle

SENATE VOTE: On final passage, March 13 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1532:)*
For — (*Registered, but did not testify:* Mark Vane, Gardere Wynne Sewell)

Against — None

On — William Kuntz, Texas Department of Licensing and Regulation; (*Registered, but did not testify:* Brian Francis, Texas Department of Licensing and Regulation)

BACKGROUND: The Business and Commerce Code, ch. 92 regulates rental-purchase agreements. The chapter defines "loss damage waiver" as a merchant's agreement not to hold a consumer liable for loss from all or part of any damage to merchandise.

Secs. 91.001 (2) and (4) provide the definitions of "commission" as the Texas Commission of Licensing and Regulation and "department" as the Texas Department of Licensing and Regulation.

Sec. 92.158 allows the commission to make rules for submitting any contract and amendments containing a loss damage waiver. Sec. 92.159 provides for the commission to charge the merchant a fee for a review of this contract and the administrative enforcement of the chapter.

Sec. 92.160 allows the department to enforce the chapter, receive and investigate complaints about a merchant, hold hearings and impose administrative penalties, and award the complainant damages not more than the contract price for the merchandise.

DIGEST:

Under SB 289, the Department of Licensing and Regulation no longer would have to approve a loss damage waiver; the bill instead would require that the loss damage waiver comply with Business and Commerce Code, ch. 92.

The bill would repeal Business and Commerce Code, subsecs. 92.001 (2) and (4), secs. 92.158, 92.159, and 92.160.

Administrative proceedings pending on the bill's effective date would be dismissed. Administrative penalties assessed before the effective date would be collected, and the department would return a prorated fee for reviewing a loss damage waiver to the merchant.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Loss damage waivers are frequently sold by merchants to a consumer on rent-to-own agreements on consumer goods, such as furniture and electronics. State law requires TDLR to review waivers before they are issued and allows for the department to investigate complaints and pursue enforcement action against those who do not adhere to these waivers. The bill would remove TDLR from the process of vetting and enforcing loss damage waivers, allowing it to focus resources on more urgent issues, while keeping in place the consumer protections of Business and Commerce Code, ch. 92. Consumers with a complaint about a loss damage waiver would have recourse through the Office of the Attorney General, which may file a Deceptive Trade Practices Act suit against the merchant.

TDLR reports no complaints have been filed against merchants regarding one of these waivers in the recent past. TDLR charges merchants a $300 fee to review a loss damage waiver.

When vetting the loss damage waivers, TDLR currently only determines whether the price of the loss damage waiver is clearly stated and if TDLR contact information is included in the contract. It does not enforce against any exemptions in a contract. Removing responsibility from TDLR would not weaken consumer coverage.

OPPONENTS SAY:

TDLR provides an important protection for customers and ensures that agreements between customers and merchants are even-handed and fair. The vetting of loss damage waivers provides a pre-emptive protection for

customers, preventing them from having to seek enforcement action through filing a complaint later. Consumers who have an issue may find seeking recourse through the Office of the Attorney General and the courts more complicated than working through TDLR. Current law provides important opportunities for the department to exercise oversight over merchants.

If TDLR did not vet the loss damage waivers before they were issued, companies could take the opportunity to create more exceptions to waiver coverage, so customers could still be liable for certain types of damage.

SUBJECT: Requiring health benefit plan coverage for enrollees with autism

COMMITTEE: Insurance — favorable, without amendment

VOTE: 6 ayes — Smithee, G. Bonnen, Morrison, Muñoz, Sheets, Taylor

0 nays

3 absent — Eiland, Creighton, C. Turner

SENATE VOTE: On final passage, May 1 — 18-13 (Birdwell, Estes, Fraser, Hancock, Hegar, Huffman, Nelson, Nichols, Patrick, Paxton, Schwertner, Taylor, Williams)

WITNESSES: For — Jon Hockenyos; Anna Petursdottir, Texas Association for Behavior Analysis; Rebecca Yerly; (*Registered, but did not testify:* Patricia Kolodzey, Texas Medical Association; Steve Ross)

Against — (*Registered, but did not testify:* Kathy Barber, National Federation of Independent Businesses/Texas)

On — Doug Danzeiser, Texas Department of Insurance

BACKGROUND: Insurance Code, sec. 1355.015, requires that health benefit plans provide coverage to an enrollee who is diagnosed with autism spectrum disorder from the date of their diagnosis until the child turns 10 years old. Health benefit plans are not required to continue to cover generally recognized services after a diagnosed enrollee turns 10 years old, but they may choose to do so.

DIGEST: SB 1484 would require that if a health benefit plan enrollee was diagnosed with autism spectrum disorder before the child's 10th birthday, the plan would provide coverage of generally recognized services without consideration of the enrollee's age.

The health benefit plan would not be required to provide coverage for applied behavior analysis beyond $36,000 per year for enrollees 10 years of age and older.

SB 1484 would exempt health benefit plans from the bill's expanded autism coverage requirement if its inclusion would require the state to make additional payments under the federal Patient Protection and Affordable Care Act (ACA), which, beginning January 1, 2014, will require states to pay the cost of any mandated coverage that exceeds that state's chosen essential health benefits benchmark plan for individual and small group plans.

This bill would take effect September 1, 2013, and would apply to health benefit plans issued or renewed on or after this date.

SUPPORTERS SAY:

SB 1484 would create large savings for families, insurance companies, businesses, and taxpayers. Individuals whose autism goes untreated tend to be much more limited in their educational achievement and workforce participation and at a higher risk of relying on state services. According to Autism Speaks, the lifetime societal cost of an autistic child has been estimated to be $3.2 million without appropriate treatment. All things considered, the cost of paying for treatment is much less than the cost of not paying for it.

Even at the outset, SB 1484 would not be costly. According to the Texas Department of Insurance, the projected expense of the current autism mandate for small group health insurance will be $1.15 per member per month in 2014. States such as Missouri, which has enacted legislation similar to SB 1484, have continued autism coverage for only 38 cents per member per month. Moreover, the bill would specifically prevent any costs being imposed on the state due to the essential health benefits requirement of the ACA.

The bill would be a justified extension of health coverage to address a growing public health crisis. Autism spectrum disorder now affects more than 1 percent of all U.S. schoolchildren. Requiring that health plans cover its treatment would help these individuals live fulfilling lives of independence and self-determination.

OPPONENTS SAY:

SB 1484 would be an expensive government mandate in the health care market. By requiring autism treatment coverage over an enrollee's lifetime, rather than during their first 10 years, the bill could raise insurance premiums and cause more individuals and companies to drop their coverage.

SB 1484's coverage of adolescent and adult autism spectrum disorder treatment would be limited in its effectiveness. Autism treatment is increasingly successful the earlier it is begun. For example, two-thirds of the lifetime costs of an undiagnosed autistic child can be reduced through early diagnosis and intensive therapy. Although the bill would extend coverage only to enrollees diagnosed by age 10, it would require a lifetime of expensive treatment with decreasingly successful health outcomes.

SB 1484 would be poorly timed. Due to the ACA, the health care system is currently undergoing its biggest changes in decades. Expanding a mandate now would increase uncertainty and should be considered only after the health insurance market has stabilized.

Texas' essential health benefits benchmark plan will cover only currently mandated autism treatment up to age 10. Depending on the federal government's methodology and speed of implementation, it could determine that the bill's coverage expansion exceeded the essential health benefits, in which case SB 1484 would make no changes to qualified health plans in the ACA's health benefit exchanges.

NOTES:

According to the Legislative Budget Board (LBB), the bill would have no significant fiscal implication to the state. Increased plan costs likely would be passed along through increased premiums to beneficiaries or employers. At the local government level, the LBB projects this would result in a cost of around $44 million during fiscal 2014-15 to the Teacher Retirement System's ActiveCare health insurance plan, which school districts and/or plan beneficiaries would have to pay.